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CENTRAL DELTA WATER AGENCY
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Phone 209/465-5883

September 23, 1999

CALFED Bay-Delta Program
1416 Ninth Street, Suite 1155
Sacramento, CA 95814

Re: Draft Environmental Impact Statement/Environmental Impact Report
CALFED Bay-Delta Program - State Clearinghouse Number 96032083
June 25, 1999

Dear Sir:

The Central Delta Water Agency submits the following comments to the above:

The CALFED Program Project violates the promises and legal mandates that the SWP and CVP exports must be limited to water which is surplus to the needs in the Delta and other "areas of origin".

Throughout the Draft (DEIS) there is a failure to address impacts by reducing project exports from the Delta and/or providing salinity control.

The Delta Protection Act of 1959 (WC 12200 et seq.) is referenced, misinterpreted and ignored. (See DEIR section 8.2.2 at page 8-14.)

The Delta Protection Act of 1959 provides the following:

"§ 12200. Legislative findings and declaration

The Legislature hereby finds that the water problems of the Sacramento-San Joaquin Delta are unique within the State; the Sacramento and San Joaquin Rivers join at the Sacramento-San Joaquin Delta to discharge their fresh water flows into Suisun, San Pablo and San Francisco Bays and thence into the Pacific Ocean; the merging of fresh water with saline bay waters and drainage waters and the withdrawal of fresh water for beneficial uses creates an acute problem of salinity intrusion into the vast network of channels and sloughs of the Delta; the State Water Resources Development System has as one of its objectives the transfer of waters from water-surplus areas in the Sacramento Valley and the north coastal area to water-deficient areas to the south and west of the Sacramento-San Joaquin Delta via the Delta; water surplus to the needs of the areas in which it originates is gathered in the Delta and thereby provides a

common source of fresh water supply for water-deficient areas. It is, therefore, hereby declared that a general law cannot be made applicable to said Delta and that the enactment of this law is necessary for the protection, conservation, development, control and use of the waters in the Delta for the public good."

"§ 12201. Necessity of maintenance of water supply

The Legislature finds that the maintenance of an adequate water supply in the Delta sufficient to maintain and expand agriculture, industry, urban, and recreational development in the Delta area as set forth in Section 12220, chapter 2, of this part, and to provide a common source of fresh water for export to areas of water deficiency is necessary to the peace, health, safety and welfare of the people of the State, except that delivery of such water shall be subject to the provisions of Section 10505 and Sections 11460 to 11463, inclusive, of this code."

"§ 12202. Salinity control and adequate water supply; substitute water supply; delivery

Among the functions to be provided by the State Water Resources Development System, in coordination with the activities of the United States in providing salinity control for the Delta through operation of the Federal Central Valley Project, shall be the provision of salinity control and an adequate water supply for the users of water in the Sacramento-San Joaquin Delta. If it is determined to be in the public interest to provide a substitute water supply to the users in said Delta in lieu of that which would be provided as a result of salinity control no added financial burden shall be placed upon said Delta water users solely by virtue of such substitution. Delivery of said substitute water supply shall be subject to the provisions of Section 10505 and Sections 11460 to 11463, inclusive, of this code."

"§ 12203. Diversion of waters from channels of delta

It is hereby declared to be the policy of the State that no person, corporation or public or private agency or the State or the United States should divert water from the channels of the Sacramento-San Joaquin Delta to which the users within said Delta are entitled."

"§ 12204. Exportation of water from delta

In determining the availability of water for export from the Sacramento-San Joaquin Delta no water shall be exported which is necessary to meet the requirements of Section 12202 and 12203 of this chapter.'

Robert Steinacher
Member - Technical Advisory Committee for the Coordinated
AB3030 Groundwater Management Plan
Director - Tehama County Farm Bureau
Surface and groundwater user.

Ross Turner, Chairman
Tehama County Flood Control & Water Conservation District

Thermalito Irrigation District
General Manager

TEHAMA-COLUSA CANAL AUTHORITY

Arthur R. Bullock
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GENERAL MANAGER,
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Lisa Weber
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Lance Boyd, Manager
Princeton-Codora-Glenn
Irrigation District
Provident Irrigation District

Ken Robison
Mayor of the City of Red Bluff

Northern Sacramento Valley CALFED Advisory Group
Groundwater Issues

It is apparent in some of the solutions currently proposed by CALFED are short-term fixes which may not adequately address the long-term water supply problems of the Bay-Delta, and to a greater degree, the unmet needs of Northern, Central and Southern California . There is considerable local concern relative to proposed CALFED solutions involving Sacramento Valley groundwater banking and conjunctive use. We support these programs when they are administered by local agencies and supported by local residents with the potential impacts being closely scrutinized. We believe, however, studies will show that many areas of the northern Sacramento Valley, especially west of the river, do not exhibit the optimal surface water/groundwater relationship necessary to sustain a long-term conjunctive use program and therefore would incur significant unmitigated impacts. The long-term ability of the groundwater resources to sustain local demands must not be sacrificed to fulfill the water needs of central and southern California. CALFED must focus on realistic, broad, long-term solutions with well defined components.

- **The CALFED preferred alternative should propose actions which will effectively address the water supply problems of the entire state in addition to the more limited scope as defined by the Bay-Delta issues.** CALFED solutions involving local groundwater should ultimately be integrated with the proposed solutions of other programs to provide a resolution to the entire California water supply problem. At this point in the CALFED planning process the criteria and objectives for each of these programs should be clearly separated and easy to understand. The preferred alternative should adequately address these separate criteria through integrated solutions.

- **Conjunctive uses definitions and programs proposed in the current CALFED planning process must prove to be reliable and consistent upon actual implementation.** The CALFED proposed conjunctive use/groundwater banking program must contain formal agreements between local, state and federal regulatory agencies to insure that the proposed solutions will not be supplemented in the future by uncertain, additional requirements. For example, CALFED must ensure that the amount of water currently sought is an upper limit and will not be increased in the future. A well-developed conjunctive use program, where applicable, should provide hard copy assurances for local needs first, then address additional solutions.

If CALFED is to fulfill its purpose, it must look at future, long-term supplies for the entire state while fixing the Delta. This philosophy is incorporated into the recommendations presented below:

1. **New surface water facilities must be equally emphasized with groundwater banking and conjunctive use by CALFED.** Offstream storage would not only provide additional flood control capability, it will also provide a net gain of water from winter storm flows that are otherwise surplus or simply "lost" to the ocean. We strongly suggest that using Northern Sacramento Valley groundwater as a "supply" source presents a short-term, highly variable, unsubstantiated and quite possibly, unreliable source of new water for CALFED and other state and federal programs.

   Conjunctive use may be an effective tool, but only if adequate surface storage, recharge facilities and associated plumbing facilities are also constructed. In addition to a number of "new water" supply benefits, additional key local improvements would be realized through the flood control and recreation benefits provided by new surface water impoundments. Finally, one of the strongest advantages to North-of-Delta storage is the ability to release water in a timely manner for fish passage. All of these aspects would impart healthy economic and environmental benefits to the region.

2. **CALFED must assure Northern Sacramento Valley water users that their proposed groundwater programs will coordinate and adhere to applicable local groundwater management plans, monitoring programs, and city and county groundwater ordinances.** The CALFED conjunctive use plan prepared for each sub-basin should reflect, foremost, the unique local concern and ground water management authority exercised therein. Those local residents, as represented by their governing boards, water agencies and local ordinances, must be brought into the decision-making process for any proposed groundwater extraction proposals in the Sacramento Valley. All potential participants in the Northern Sacramento Valley should be notified and provided a fair and timely opportunity to take part in the proposed program at the time of its conception.

3. **CALFED and DWR must assess the combined impact of all proposed water acquisitions on the Northern Sacramento Valley including impacts associated with the E.W.A.**
   Potential impacts for the proposed additional groundwater extraction programs must be assessed by CALFED including, but not limited to: A. Subsidence B. Permanent decline of groundwater levels (Mining) C. Surface water/groundwater interaction and the impacts to surface supplies (i.e. Sacramento River and its tributaries) D. Decline in groundwater quality. E. Significant drop in summer groundwater levels with increased pumping costs.

The Northern Sacramento Valley has a very real concern regarding groundwater recharge under CALFED's proposals to date. The lack of live streams in summer and fall, the lack of storage facilities on most streams, and a commitment by CALFED to prioritize Delta In-Basin requirements over recharge of Northern Sacramento Valley aquifers has generated serious questions regarding if, when and how recharge would occur if a basin were evacuated, or even partially evacuated, particularly in successive drought years. Currently, DWR and State Fish and Game programs along East-side tributaries are satisfying in-stream environmental demands by replacing surface water use with local groundwater extractions. This not only potentially depletes the local groundwater resources, but also eliminates that deep percolation recharge element provided by the applied surface water.

Most Northern Sacramento Valley basins currently enjoy excellent water quality. Thorough studies, including the possible health effects and increased water treatment costs, should be made regarding the potential for deterioration of water quality. These studies and the resulting baseline information from them need to be a matter of record prior to any detectable degradation of water quality. Loss of water quality by extensive groundwater extraction is, in all probability, irreversible, due to unreliable winter rainfall or snow pack.

Many areas of the Sacramento Valley typically experience lowered groundwater levels during the summer irrigation season when groundwater pumping exceeds the aquifer recharge rate. In many areas, groundwater levels decline from late spring until July or August, at which time they may begin to recover. Additional proposed groundwater extraction from these areas may lower groundwater levels further. Any significant decline in pumping levels will require extension of pump columns, turbine modifications and increased horsepower requirements. A thorough study of these costs and identification of parties responsible for payment is imperative in order to analyze the full impact of increased groundwater pumping.

All of these impacts should be evaluated by factoring into the assessment the importance of ultimate water needs, existing water rights and Area of Origin priority of Northern Sacramento Valley Counties. These possible effects have the potential to impact the local agricultural economy, and therefore the economy of Northern Sacramento Valley Counties. Local affordability and reliability of drinking water supplies and the development potential of local properties will also be effected. Further, subsidence presents a threat to structural integrity of flood control facilities and other infrastructure. A water level decline can result in the possible degradation of riparian habitat dependent on the surface/groundwater interaction.

Future growth and urban expansion in the Northern Sacramento Valley will depend on local groundwater for its water supply. An "ultimate needs" analysis should be completed for the entire region to determine if there is groundwater available for possible export before considering future demands from the area.

These impacts must be fully addressed by CALFED immediately, before implementation of any proposed conjunctive use programs.

CONCLUSION

The Sacramento Valley aquifer system is highly variable, complex, and not well understood. By its very definition "conjunctive use" requires the combined use of groundwater and surface water supplies, using groundwater to a greater extent in dry years and allowing recharge of the groundwater basin through dependence on surface water in the wet years. It is clear that a large area of the Northern Sacramento Valley does not have a surface water supply and is totally dependent on groundwater. There should be no evacuation or transfer of groundwater out of any area where groundwater is the only source. A conjunctive use program in parts of the Northern Sacramento Valley is a possibility if operated within the controls of groundwater management plans and local regulations and ordinances designed to protect these groundwater basins from over-draft, subsidence, and un-mitigated third party impacts. The long-term ability of the groundwater resources to sustain current and future local demands is imperative.

FLOOD MANAGEMENT ISSUES

The CALFED Bay-Delta Program has developed a long-term comprehensive plan that seeks to restore ecological health and improve water management for beneficial uses of the Bay-Delta systems. Many of the activities proposed in this plan will directly impact water users in the Sacramento Valley. At this critical point in the CALFED process, we have developed the following recommendations for the consideration and acknowledgment by CALFED. These recommendations have been developed with the intent to ensure that CALFED addresses the crucial elements of cost effectiveness, practicality and true long-term program efficiency in their proposed solutions.

1. **CALFED solutions should provide flood control enhancement** through the development of new surface storage, coordinated management and operations of proposed facilities and improved re-operation and maintenance of existing storage reservoirs and flood control projects. **Specific concerns applicable to the entire CALFED study area include the following:**

iii. **CALFED must construct offstream storage of surface water in the Sacramento Valley, with attendant flood control features**. Northern Sacramento Valley water users support the development of west-side storage facilities. The Sites off-stream storage reservoir provides one such facility, as does the development of other west-side dam sites, preferably above Red Bluff. **Benefits could include: improved fish passage at Red Bluff Diversion Dam; less dependancy on the direct Tehama-Colusa Canal - Sacramento River connection; water to the west-side districts; temperature control; increased prime spawning habitat; and a possible solution to the federal fish passage issue.**

In addition to the obvious flood control and "new water" supply benefits, additional key local improvements would be realized through recreation benefits provided by new surface water impoundments. One of the strongest advantages to north-of-delta storage is the ability to release water in a timely manner for downstream fish passage. All of these aspects would impart healthy economic and environmental benefits to the region. CALFED should recognize that new reservoirs will not completely eliminate flood flows, which are necessary to maintain downstream riparian habitat, meander belts, and gravel recruitment.

CALFED should also work with DWR and the Bureau of Reclamation with the intent of maximizing allocations for flood control storage in existing State Water Project (SWP) and central valley project facilities.

ii **The carrying capacity of existing flood control channels must be maintained or improved through CALFED**. There must be a flavor of compromise reflected in the CALFED plan which attempts to merge environmental solutions and flood control solutions. The goals of those who support the reversion of river systems back to a "natural" meandering state are sometimes at odds with those who are charged with protection of property and lives. It is apparent that significant habitat acquisition and restoration efforts are already underway in the Sacramento Valley. We acknowledge that this effort is an important component of the CALFED Bay-Delta plan. However, many urbanized and established agricultural areas in the valley rely heavily on attendant flood control facilities to provide protection for those areas.

Given the established level of development that exists in the valley, the reversion of the Sacramento River back to the state that existed before the arrival of Europeans 200 years ago, is simply not practical or feasible. Many reaches of the Sacramento River and its larger tributaries, including the Feather River, the Sutter Bypass and the Yolo bypass are, in essence, delivery channels for the Central Valley Project and the State Water Project. Local agencies are charged with maintenance duties for these channels. In those areas where authorized flood control and bank stabilization projects exist, proper maintenance of channel capacity must be supported by CALFED. Measures which provide flood control benefits may also be "fish friendly" (i.e. improved fish passage during periods of low flow) through their implementation and provide environmental enhancement.

iii. **The impacts associated with the development of setback levees must be closely scrutinized by CALFED.** In Sutter and Yolo counties, a large mass of riparian habitat is already contained within the existing levee system. Setting these levees further back from the river will create a much larger interior area, particularly along those reaches where the setback levee will be constructed on ground that is significantly lower than that underlying the existing levee (which is the case in Sutter County). In order to maintain levee height in low areas, the new setback levees will have to be built larger than the existing structures, as such, setback levees constructed along both sides of the stream will require additional land just to accommodate the new levee structure. To what level of protection will these new set back levees be constructed? Will they qualify for PL 84-99 assistance if damaged?

The impacts associated with the loss of existing land to setback levee construction and riparian corridor enhancement must be fully evaluated by CALFED. Areas protected by levees are generally productive agricultural land, rural residential developments, or urban areas. Removing this land from the tax roll to allow for expansion of riparian habitat presents a loss of tax base to local government, possible relocation of residences and businesses, and a decline in food production,

as well as the possibility of third-party impacts from the introduction of endangered species to adjacent lands.

iv **CALFED agencies must develop assurances of a "safe harbor" program that will encourage landowners to participate in the development of habitat enhancement programs.** There is very little certainty associated with the Endangered Species Act. CALFED must establish parameters for the impacts of future endangered species listings. CALFED and the SB 1086 process should provide incentives to encourage local landowners and resource agencies to participate in this program. Local water users, agencies and landowners are very concerned with current mitigation measures that are perceived to be arbitrarily enforced by regulatory agencies. CALFED can help to create a more cooperative atmosphere between regulatory agencies and local interests. Perhaps future mitigation measures should be performed through the regulatory agencies charged with enforcement of the ESA, with partial or full funding provided by those agencies. CALFED might first consider purchasing flood-prone lands at fair market value and converting those lands to conservation uses and mitigating tax revenue loss.

v. **Northern Sacramento Valley landowners and businesses must be assured that CALFED ecosystem restoration efforts will not threaten essential facilities at critical locations.** CALFED must ensure that bank protection will be maintained, or enhanced, at specific locations (hard points), including, but not limited to the following:

- Public facilities (bridges, highways, parks, flood control works).
- Substantially developed areas (cities, towns, & residential developments).
- Quasi-public & private infrastructure, such as pumping plants.

CALFED should coordinate with SB 1086 which is developing "hard point" nomenclature.

vi. **The ERP natural process replication proposals should be proceeded by a process that encourages public participation and comprehensive planning, provides assurances regarding impacts to landowners and respects existing land and water uses.** On an unprecedented scale, the ERP places particular emphasis on the replication of natural processes - artificial replication of flow and temperature regimes, inundation of flood plains, river meander, and sediment transport. The purported goal of these projects is laudable - the reactivation of natural processes to enhance habitat for fish and wildlife species. Many of these actions, however, may result in unpredictable and changing river conditions that could directly impact agricultural diversions and protective fish screens, and may increase conflicts with state and federal endangered species regulations. These actions may also adversely affect the viability, operation and management of local

agencies that provide necessary water supply, drainage, flood control, bank protection and other services to area landowners.

2. CALFED must address several unique issues which directly relate to the **Sacramento River proper**. These issues include the following:

i. It appears that all, or parts of, the SB 1086 Advisory Council ongoing plan development for the Upper Sacramento River may be enveloped by CALFED. The 1086 Committee has proposed the development of Conservation Areas along the Sacramento River, which would be managed by a local entity comprised of landowners, local environmental interests and local agency representatives. **The establishment of this entity, controlled and managed by the local stakeholders, should be retained by CALFED.**

ii The "limited meander" concept may result in significant upstream and downstream flooding impacts, particularly in those areas close to "hard points". If a local landowner agrees to participate in a CALFED "ecosystem restoration" project that ultimately contributes to increased flooding to another party, who will assume the responsibility for the damages? **CALFED must establish responsibility for potential liability caused by "limited meander".**

iii. **The permitting process must be streamlined and a mechanism provided for funding of authorized flood control and bank protection works on the Sacramento River and its tributaries**. Each county in the northern Sacramento Valley handles management of flood control and bank protection on the Sacramento River in a unique manner. In Sutter and Yolo counties numerous reclamation districts share this responsibility. Tehama County has a county-wide Flood Control and Water Conservation District. Butte and Glenn counties currently have no agencies charged with these duties.

The disparity that is apparent between individual counties is reflective of the lack of focused direction towards this issue at the federal level. Emergency bank protection along the Sacramento River is nearly impossible to fund under the current "Federal Levee Policy". Maintenance and repair operations along the river are encumbered by numerous, difficult, and inconsistent permitting requirements. **CALFED, as a multi-agency organization working in cooperation with the SB 1086 process, is in an excellent position to effectively streamline and coordinate the environmental permitting process on the Sacramento River.**

River bank repairs are becoming increasingly difficult to complete due to limited revenue sources at the local level. Local program administration of uniform flood control and bank protection management criteria must be applied for the length of the upper Sacramento River. In those areas where flood control agencies are

funded by local property taxes, the revenues are barely sufficient to keep up with O & M expenses and flood damage repairs, particularly since the passage of Proposition 13.

As previously stated, the Sacramento River, Feather River, and the Sutter / Yolo bypass systems are, in essence, delivery channels for the Central Valley project and the State Water Project. Local agencies are charged with maintenance duties for these channels. Proposed higher releases and/or reoperation from Shasta Dam will cause river levels to remain higher for extended periods of time. This in turn will super saturate the river banks causing more bank erosion. How will this be mitigated? Also, the sustained higher river levels will limit the time to repair numerous facilities at low flow. How will this be mitigated? No funds are currently provided by any state or federal agency to assist with these costs. Outside funding must be provided to local flood control agencies to assist in their efforts, which indirectly benefit all the customers supplied by the CVP and SWP. CALFED should consider proposing a "wheeling charge" during the delivery season which could benefit those local agencies performing maintenance of these facilities.

CONCLUSION

The proposed solutions will improve flood prevention through the development of new surface storage, improved operations of proposed facilities and enhanced re-operation of existing flood control facilities. Associated with these improvements, CALFED must develop a proper mitigation policy for implemented actions and ensure guaranteed protection of specific hard points on the Sacramento River and its tributaries. Any proposed "limited meander" concept should be backed up with a plan that establishes responsibility for associated liability. The concept of developing a local management entity in the Sacramento River meander zone comprised of landowners and local environmental interests and resource managers (similar to that proposed by the SB 1086 Committee) should be retained by CALFED. Finally, the current, cumbersome permitting process must be streamlined, coordinated and a stable, sufficient funding source must be developed to support maintenance, operation and repairs of authorized flood control and bank protection works.

STORAGE AND CONVEYANCE ISSUES

1. **CALFED must construct facilities for offstream storage of surface water in the Sacramento Valley.** Offstream surface storage provides a much greater degree of flexibility and control than the other storage options considered by CALFED. Effective planning for extreme event --floods and droughts-- can be best accomplished through the development of new surface storage facilities. When excess surface waters are controlled closer to their areas of origin, significant downstream damaging impacts can be prevented.

   Northern Sacramento Valley water users strongly support the development of west-side surface storage facilities. The off-stream storage reservoir located west of Colusa at Sites, as proposed by CALFED, appears to be extremely cost effective, while having a minimal environmental impact. The storage and conveyance component inventory recently released by CALFED identifies several other surface storage facilities on the west side of the valley which also merit serious consideration by CALFED. These projects include, but not necessarily limited to Cottonwood Creek, Red Bank and the Thomes-Newville complex. In addition to these locations and the large Sites project, CALFED should also evaluate the development of smaller reservoirs in western Yolo County, along Oat Creek, Sand Creek and Wilson Creek.

   One of the most significant advantages of north-of-delta storage is the ability to time releases of water for all uses and to supplement seasonal flows to the Sacramento River. In addition to the obvious flood control and "new water" supply benefits, additional key local improvements would be realized through the recreation and economic benefits provided by new surface water impoundments.

2. **The CALFED conveyance scheme combined with the development of new surface storage should include the extension of the existing Tehama-Colusa Canal system.**

   Reliable year-round, fish-friendly water diversions into the Tehama-Colusa Canal can be accomplished by either the installation of effective fish ladders at Red Bluff Diversion Dam or the construction of a completely new screened pumping facility near the current Red Bluff Diversion Dam. Extension of the Tehama-Colusa Canal will provide the following benefits:

   - The capability to transport large volumes of water to a major off-stream storage facility (i.e., Sites Reservoir)
   - The ability to supplement the water supplies to other existing west-side facilities (i.e. Lake Berryessa)
   - The flexibility to provide water releases anytime and at numerous locations along its current 110 mile length to augment Delta flows and provide other environmental benefits.
   - Improved conjunctive use opportunities in Yolo County.

The size and configuration of the proposed isolated conveyance facility is not disclosed in sufficient detail. There is some discussion of a 2,000 to 4,000 cfs diversion, but little or no discussion regarding the configuration for the proposed upper limit of this range. The process of triggering additional conveyance facilities, beyond the scope discussed elsewhere in this report, should be addressed in detail by CALFED. Furthermore, the triggering criteria is overly rigid, in stark contrast to its vague and ambiguous context. If we are to be shackled by rigid standards (50 ppb bromide, 3 ppm TOC), there should be some demonstration of why these were chosen and a scientific analysis of whether or not they can be attained. It is premature at this time to set an arbitrary numerical standard as the basis for this important decision.

CONCLUSION

Northern Sacramento Valley water is a critical community resource. The CALFED Bay-Delta solution must employ a storage and conveyance scheme that provides new water supplies, not a reallocation of existing supplies from one area or purpose to another. New water can be most easily developed by capturing excess Sacramento River flows that currently pass by the Delta and through the San Francisco Bay without providing appreciable benefit. In this way, a progressively increasing water supply system can keep pace with the long-term water needs of a growing California, without adversely impacting the economic viability of communities reliant on their existing local water supplies.

NORTHERN SACRAMENTO VALLEY
7-COUNTY CALFED ADVISORY GROUP
AUGUST 25, 1999 MEETING
MAXWELL, CALIFORNIA

Ernie Ohlin, Tehama County Flood Control & Water Conservation District

Dick Mudd, Glenn County Supervisor

Dan Keppen, Northern California Water Association

Bob Steinacher, Tehama County Water Advisory Committee

Jim Lowden, Corning Water District

Tom Mumme, Dunnigan Water District

Cynthia Peterson, Dunnigan Water District

Lisa Weber, Westside Water District

Charles Willard, Supervisor Tehama County

Sue Sutton, Family Water Alliance

Marion Mathis, Colusa County

Kim Davis, Sen. Johannesson's Office

Forrest Sprague, Private Consultant,

Lance Boyd, Princeton Irrigation District

Bud Hagen, El Camino Irrigation

Bret Nassau, Orland Unit Water Users

Van Tanney, Glenn-Colusa Irrigation District

Sandy Denn, Glenn-Colusa Irrigation District Glenn County Advisory Committee

Art Bullock, Tehama-Colusa Canal Authority

Jan Jennings, Tehama-Colusa Canal Authority

William Waite, Colusa County Supervisor- Member of the Colusa Basin Drain

Keith Hanson, Glenn County Supervisor

Pat Minturn, Shasta County Dept. Public Works

Erick Wedemeyer, Shasta County Dept. Public Works

Bill Borror, Tehama County Supervisor

Max Richman, Rio Alto Water District

Roger Sherrill, Rio Alto Water District

Vickie Newlin, Butte County

Mary Ann Houx, Butte County Board of Supervisers

Ed Craddock, Butte County

Chrissy Bevens-Brown, Tehama County Flood Control and Water Conservation District

Natural Resources Defense Council
Natural Heritage Institute
The Nature Conservancy
The Bay Institute of San Francisco
Sierra Club
Clean Water Action
Mono Lake Committee
Golden Gate Audubon Society
CalTrout
Friends of the River

September 23, 1999

Rick Breitenbach
CALFED Bay-Delta Program
1416 Ninth Street, Suite 1155
Sacramento, CA 95814

Re: **Comments on the CALFED Multi-Species Conservation Strategy Technical Appendix**

Dear Mr. Breitenbach,

The above organizations submit the following comments on the CalFed Multi-Species Conservation Strategy (MSCS), included as a technical appendix to the draft CalFed Environmental Impact Statement/ Environmental Impact Report (EIS/EIR). Our review focuses primarily on Chapter 7 of the MSCS, regarding compliance with the federal and state Endangered Species Acts (ESA and CESA) and the state Natural Communities Conservation Planning Act (NCCPA).

As discussed below, there are both major and minor structural flaws with the MSCS. Overall, as currently structured, the MSCS will not achieve compliance with the federal and state ESAs. Most fundamentally, the MSCS compliance strategy is not linked to the mandatory species recovery goals of the federal and state ESAs, nor is it adequately coordinated with species recovery goals in the MSCS or recovery plans. Rather, the program is focused on authorizing take, minimizing the impacts of take, and preventing jeopardy to listed species.

In addition, the MSCS places disproportionate emphasis on "streamlining" compliance with the ESA, CESA and NCCPA, authorizing take of listed species under these statutes, and providing assurances to participating entities, while minimizing the need for long term species protection as required under the ESA, CESA and the NCCPA. It is therefore questionable whether the program will even meet the minimum requirements for authorizing incidental take under the ESA, let alone species recovery goals.

What follows are general comments and a section-by-section analysis of the MSCS' ESA, CESA and NCCPA compliance scheme.

I. GENERAL COMMENTS

Because the CalFed Program will be implemented in large part by federal and state agencies, the MSCS must be designed to satisfy the overall goals of the ESA and CESA to recover listed species. Under the ESA and CESA, all federal and state agencies have a mandatory duty to "conserve" listed species. 16 U.S.C. § 1536(a)(1); Fish and Game Code §§ 2052, 2055. Both federal and state law define "conserve" as "the use of, and to use, all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this chapter are no longer necessary," i.e. to the point of full recovery. 16 U.S.C. § 1532(3); Fish and Game Code § 2061.

While the MSCS states that it will either provide for the recovery or "contribute to the recovery" of certain categories of covered species (while merely "maintaining" a third category), the MSCS ESA, CESA and NCCPA compliance strategy is not clearly linked to achieving these overall MSCS goals. Rather, the compliance strategy is focused exclusively on authorizing and mitigating the effects of incidental take of covered species and preventing jeopardy to such species under sections 7 and 10 of the ESA and the state NCCPA. Moreover, the recovery goals of the MSCS are not linked with existing and future species recovery planning efforts under the ESA and CESA, thus potentially creating two competing and possibly conflicting species recovery efforts. The MSCS, in conjunction with the ERP, should function as a recovery plan for all covered, listed species.

In order to meet the requirements of the ESA and CESA, therefore, the MSCS compliance strategy should be clearly linked with the overall MSCS recovery goals and other species recovery efforts under the ESA and CESA.

II. SECTION-BY-SECTION COMMENTS

A. Sections 7.1 and 7.2: Programmatic ESA, CESA, and NCCPA compliance and ESA, CESA and NCCPA Compliance for Individual Actions

The MSCS states that it will serve as the biological assessment for the CalFed program, in support of programmatic ESA section 7 consultations to be prepared by the U.S. Fish and Wildlife Service (USFWS) and National Marine Service (NMFS) on the entire CalFed program. The MSCS also will double as a "programmatic" natural communities conservation plan (NCCP) under the NCCPA.

Neither the MSCS nor the programmatic biological opinions will themselves authorize take of MSCS covered species. Rather, the MSCS will serve as the basis for Action Specific Implementation Plans (ASIPs) prepared for each CalFed program action. These ASIPs will be tiered off of, and based in large part on, the biological data, CalFed program information, impact analysis and conservation measures in the MSCS. The USFWS and NMFS will issue a project-level biological opinion and incidental take statement under section 7 and/or an incidental take permit under section 10 for each ASIP under the ESA. In addition, the Department of Fish and Game (DFG) will issue a Fish and Game Code section 2835 permit for each ASIP under the NCCPA. DFG will only issue CESA section 2081 take permits for species that are *not* on the MSCS covered species list.

We have several serious concerns about this streamlined regulatory approach to compliance with federal and state endangered species laws.

1. The MSCS Contains Inadequate Biological Information for Tiering of ASIPs.

First, the MSCS does not clearly indicate how and to what extent it will be used to support subsequent CalFed program actions. This is important because the MSCS is extremely vague and general and cannot serve as an adequate basis, standing alone, for issuance of take authorization under the federal and state ESAs for individual program actions. Importantly, the MSCS itself recognizes that it lacks critical information necessary for informed decisionmaking under the endangered species laws. *See* p. 7-2 ("[i]n most cases, additional information will be required for the Wildlife Agencies to ascertain a CalFed program action's specific impacts on species to the extent required by the ESA, CESA and the NCCPA").

However, the MSCS fails to indicate what specific actions will require further biological analysis and information in the ASIPs and what actions will not. *See* MSCS p. 7-8 ("[a]dditional information and analysis will be required for *many* Program actions"). Nor does it indicate how much and precisely what kind of additional information (e.g. population surveys) will be needed in an ASIP in order to implement a CalFed program action. It therefore is impossible to determine, based on the MSCS, exactly what level of biological review each CalFed program action will receive under the MSCS and an ASIP tiered off of the MSCS.[1]

More troubling though, are conflicting statements elsewhere in the MSCS about whether subsequent biological analysis will even be required *at all* in an ASIP. *See, e.g.*, p. 7-8 ("[t]he MSCS has reduced the potential for an implementing entity to be required to provide additional program information, impacts analysis, and conservation measures, by offering as much detail as is feasible on the expected impacts of program actions on species and habitats and the expected conservation measures for those impacts"); p. 7-2 ("[t]he subsequent compliance process for *some* Program actions *may* be complete *shortly* after CALFED issues the ROD and makes findings of fact for the CALFED program, depending upon the level of detail available about each action and its environmental effects").

Given how inadequately defined the CalFed program actions are, and the corresponding lack of detailed environmental analysis in the draft EIS/EIR, the prospect that even *some* program actions will not receive more detailed analysis in an ASIP and project-specific biological opinion is legally problematic. Absent additional biological analysis in each ASIP, the streamlined ESA compliance procedure in the MSCS means that biological opinions could be issued, and CalFed programs implemented, on the basis of little or no basic biological

[1] The MSCS states that CalFed is developing a coordinated environmental review and permitting process for program actions, which will include the MSCS' streamlined procedure for compliance with the ESA, CESA and NCCPA. This process is a critical part of the entire CalFed program, and should not be developed after the fact but rather should be prepared now and circulated for public review and comment.

information. This lack of biological information then would be compounded by the level of regulatory assurances being provided to participating entities (see below).

Under these circumstances, it will be impossible for federal agencies to meet their obligations under section 7 to conserve listed species, and to ensure that their actions are not likely to jeopardize the continued existence of listed species and are not likely to adversely modify or destroy designated critical habitat. It will also be impossible for the USFWS and NMFS to meet their legal obligations under section 10 to ensure that the level of take authorized in an incidental take permit will be minimized and mitigated to the maximum extent practicable, and will not appreciably reduce the likelihood of species survival and recovery in the wild. Likewise, DFG will be unable to meet its obligations to conserve listed species under CESA and to ensure that the statutory criteria for issuance of incidental take permits are met.

The MSCS therefore must be revised to require additional biological analysis in each ASIP, as necessary to meet the requirements of the ESA and CESA. The level of additional analysis required should be based on guidance governing preparation of project-specific environmental documents which are tiered off program-level environmental documents under National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA). Under this approach, the project-level document will incorporate by reference relevant *overall* analysis from the program-level document, while analyzing the site-specific impacts of the project in detail.

2. DFG Must Issue Incidental Take Permits for ASIPs Under CESA, Not the NCCPA.

In addition to inadequate biological information, the MSCS violates CESA because it states that take will be authorized under the NCCPA, not CESA, for all CalFed program actions that may affect MSCS covered species. The NCCPA does not authorize DFG to permit incidental take of CESA-listed species independent of CESA. To the contrary, section 2835 of the Fish and Game Code states that DFG "may permit the taking, *as provided in this code,* of any *identified* species whose conservation and management is provided for" in a DFG-approved NCCP. Thus, the incidental taking of any CESA-listed species identified in an NCCP must be authorized as provided for by CESA. Under section 2081 of CESA, DFG may permit the incidental take of candidate, threatened and endangered species under CESA if certain requirements are met. Fish and Game Code § 2081.

The NCCPA itself recognizes that NCCPs that cover state listed species must be permitted under section 2081 of CESA. *See* Fish and Game Code § 2825(c) (NCCPs "shall be implemented pursuant to Section 2081"). In San Bernardino Valley Audubon Society v. Metropolitan Water District, Riverside Sup. Ct. Case No. 274844, affd. on other grounds, __ Cal. App. 4th __ (1999), the Riverside County Superior Court interpreted this language. The court held that "the NCCP Act does not provide independent authorization for incidental 'take' for development purposes, but instead refers back to CESA and to section 2081 [of the Fish & Game Code]." (Decision on Pet. for Writ of Mandate, at 4.)

Thus, the MSCS must be revised to require take of CESA-listed species to be authorized only under that statute.

3. The MSCS Contains Inadequate Provision for Public Review of and Comment on ASIPs.

It is unclear whether the ASIPs will be made available for public review and comment under the federal and state ESAs, NEPA and CEQA. The MSCS states that most ASIPs will be analyzed and permitted under section 7 of the ESA rather than section 10. Only CalFed program actions that are not authorized, funded or carried out by a federal agency will be permitted under section 10. Section 7, however, does not include any mechanism for public review of draft biological opinions, whereas the section 10 permitting process includes a thirty day public comment period on an incidental take permit application and also requires review under NEPA.

Because ASIPs will provide the mechanism through which specific program actions will be implemented and take of listed species will be authorized, it is imperative that ASIPs be circulated for public review and comment prior to their adoption. In addition, because a public agency's preparation and approval of an ASIP, and the Wildlife Agencies' issuance of take permits for such plan qualify as "major federal actions" under NEPA and "projects" under CEQA, these plans are subject to environmental review under NEPA and CEQA.

B. Section 7.3: Covered Species

1. Definition of Covered Species

The definition of "covered species" is inconsistent with the MSCS' goals. The MSCS states that its goals are to recover, contribute to recovery of, or maintain the species evaluated in the MSCS. However, the MSCS and Phase II Report also state that species may be included on the covered species list if they are "protected from jeopardy." Under the Wildlife Agencies' current interpretation of the jeopardy standard, a species may be "protected from jeopardy" even if its population is declining. This is not consistent with a species recovery objective. Therefore, the MSCS covered species list should only include those species for which the MSCS will ensure or contribute to its recovery.

2. Modifications to Covered Species List

In addition, we strongly object to the limitations on including additional mitigation measures in the MSCS or in an ASIP when an unlisted species is added to the covered species list. The MSCS indicates that if a species is proposed for listing that is not a covered species, the wildlife agencies will first determine whether additional conservation measures beyond the MSCS are necessary to conserve the species. If not, the species will be added to the covered species list and take of such species will be authorized pursuant to the ASIPs. If additional measures are determined to be necessary, the Wildlife Agencies must, where possible, "give preference to measures that do not increase" or "do not require further" restrictions on the use of land or water. MSCS, p. 7-15.

This limitation on additional mitigation measures is biologically unwarranted and legally unjustified. Nothing in the ESA, CESA or NCCPA authorizes the Wildlife Agencies to limit

the nature and extent of the additional measures necessary to ensure conservation of species subsequently included on the covered species list. In fact, to the contrary, the Wildlife Agencies cannot include a species on the covered species list (and thereby authorize issuance of take permits for such species), unless the take will be minimized and fully mitigated, and the amount of the authorized take will not jeopardize the continued existence of the species, among other things. 16 U.S.C. §§ 1536(a)(2), 1539(a)(2)(B); Fish and Game Code § 2081(b) & (c). If the MSCS does not adequately provide for the species' conservation, the Wildlife Agencies must impose *any and all* additional mitigation measures necessary to meet the statutory criteria for issuance of take permits under the ESA and CESA. This may require additional restrictions on the use of land or water, depending upon the biological needs of the species at issue.

C. Section 7.4: Implementation

The MSCS contains no mechanism to ensure that individual program actions will in fact be implemented. This renders the program legally vulnerable, since the MSCS programmatic biological opinions will be premised on the assumptions that all program actions will be implemented and that the program *as a whole* will provide benefits to species. However, if certain portions of the program are not implemented (e.g. portions of the Environmental Restoration Program - ERP), the assumption that the program will provide overall benefits to covered species collapses, thereby undermining the entire basis for the "no jeopardy" programmatic biological opinions.

1. Implementing Entities

The MSCS states that "[a]t this time, it is not possible to precisely identify what agency or other entity will implement each of the Program actions and measures in the MSCS." MSCS, p. 7-15. This is absurd. At a minimum, the MSCS can and should identify what agency or group of agencies is likely to implement each of the program actions and MSCS conservation measures. Absent this information, the success of the program cannot be evaluated.

2. Linked Actions

When evaluating "linked actions" (e.g. conveyance actions implemented simultaneously with ERP actions), the MSCS states that the Wildlife Agencies will make their determinations under the ESA, CESA and NCCPA "based on their overall beneficial and detrimental impacts to the covered species, rather than the impacts of each action individually." MSCS, p. 7-17. The MSCS states that the purpose of this approach is to "further streamline the compliance process for those Program actions that are complementary from a biological standpoint." *Id.*

This streamlined approach to evaluating linked actions is inappropriate under the ESA and CESA, which require the biological impacts of each program action to be analyzed separately and comprehensively (though all such analyses could be in a single document). While the species benefits of one program action may in fact "cancel out" or mitigate for the detrimental impacts of another program action, this determination cannot be made accurately or objectively absent separate evaluation of each program action. Individual analysis of program actions is also important because there may be circumstances in which "linked actions" are not actually implemented simultaneously.

More fundamentally, linkage of restoration and conveyance actions has the potential to greatly distort ecosystem restoration priorities in the ERP and nullify recovery objectives of the ERP and MSCS. If a "no jeopardy" biological opinion is issued for the ERP or component thereof, this opinion must be predicated upon the program's ability to achieve species recovery objectives, not on its neutral effect when implemented in conjunction with water development projects.

3. Assurances

a. ***Providing assurances for federal and state agencies is legally and biologically inappropriate.***

The MSCS implies that regulatory assurances would be provided to federal and state agencies implementing CalFed program actions. *See* MSCS p. 7-19 (the MSCS includes in the streamlined permitting process "a means by which assurances can be provided to CalFed agencies and entities" implementing program actions "that the conservation measures approved by the Wildlife Agencies for covered species will not be substantially increased or altered over time" and "[t]he Wildlife Agencies will provide appropriate assurances regarding each CalFed Program action directly to the CalFed agency or other entity carrying out the program action"). We strongly object to CalFed providing such assurances, for several reasons.

First, providing regulatory assurances to federal and state agencies is illegal. It is wholly inconsistent with the agencies' mandatory recovery obligations under the ESA and CESA. Under the ESA and CESA, all federal and state agencies have a duty to "conserve," i.e. recover, listed species. 16 U.S.C. § 1536(a)(1); Fish and Game Code §§ 2052, 2055. However, if federal and state agencies' responsibilities to implement additional CalFed program conservation actions is limited by assurances, this unlawfully circumscribes their mandatory duty to recover species. For the same reasons, federal agency assurances are inconsistent with their duty under section 7(a)(2) of the ESA to ensure no jeopardy and no adverse modification of critical habitat.

The MSCS also cannot legally authorize biological opinions to limit federal agencies' duty to reinitiate consultation under the ESA. Federal regulations currently require consultation to be reinitiated whenever a new species is listed or critical habitat is designated within an area affected by the federal action. 50 C.F.R. § 402.16. The MSCS unlawfully attempts to override this federal regulation by allowing program-specific biological opinions to authorize take of unlisted, covered species automatically (if and when they are listed) without reinitiating consultation at that time. MSCS p. 7-20.

Second, even assuming *arguendo* that providing regulatory assurances to federal and state agencies is legal, it is biologically unjustifiable. Such assurances unnecessarily lock current program mitigation measures into place and seriously reduce the CalFed program's ability to respond meaningfully to changed circumstances and new information through adaptive management. Such assurances could undermine the success of the entire program by severely limiting federal and state agencies' legal obligation to respond to declines in species populations if current program actions prove to be unsuccessful or inadequate to achieve species recovery goals. Since federal and state agencies are the ultimate backstop in ensuring that the overall goals of the

ESA and CESA are met, if their obligation to protect species is limited, *there will be no further recourse for species protection under the law.*

Third, such assurances are wholly inappropriate and unnecessary from a policy standpoint. Federal and state agencies are already legally obligated to provide for species recovery. Thus, there is no legal, practical, or other reason to provide them with "incentives" (in the form of regulatory assurances) to undertake species recovery measures. Indeed, the very concept of providing assurances to federal and state agencies is unprecedented and absurd.

b. "Safe harbor" type assurances for cooperating landowners are overbroad and poorly defined.

We also strongly object to the blanket "safe harbor" program for all cooperating landowners, *including public entities.* The safe harbor program in theory holds some promise for improving landowner incentives for species protection in limited circumstances on *private lands.* Nevertheless, the program is highly experimental, and must be carefully tested on a case-by-case basis. The program is fraught with potential biological pitfalls, such as the "biological sink" problem, inadequate baseline surveys, inadequate monitoring of actions that may cause populations to fall below baseline levels, etc. It is therefore extremely inappropriate for the MSCS to suggest that some kind of safe harbor protection will be provided for all cooperating landowners, particularly public agencies. Such blanket protection could undermine the benefits of the entire ERP, for example, by allowing water diverters to bring species down to *zero baseline* levels "in streams or rivers newly opened to anadromous fisheries" or any number of other specified circumstances.

Moreover, the cooperating landowner assurance program, as defined, is unnecessarily vague. The program states that it is intended to preserve "compatible land uses" "where appropriate," but fails to specify when preservation of such uses would be deemed appropriate. The program goes on to list a wide variety of broadly-applicable circumstances under which assurances might be given to cooperating landowners (e.g. routine and ongoing agricultural activities), but does not include any conditions or limitations on granting such assurances. In addition, it is difficult to imagine how federal and state agencies will be mandated to implement additional mitigation measures to compensate for the impact of providing broad landowner assurances, when the agencies themselves will have their own assurances that they will *not* be required to undertake further mitigation.

Finally, the cooperating landowner assurances fail to account for species recovery goals in the ESAs and MSCS. "Compatible land uses" for which assurances are available are defined as those that "will not *degrade* existing environmental conditions for covered species." MSCS p. 7-22. This creates a situation in which the entire burden of meeting ESA and MSCS goals could fall on federal and state agencies, a problem which will be severely compounded by providing these agencies with their own assurances!

4. Funding

Pursuant to section 10 of the ESA and section 2081 of CESA, funding for implementation of MSCS conservation measures, and for monitoring compliance with and the

effectiveness of such measures, *must be* assured. 16 U.S.C. § 1539(a)(2)(B)(iii); Fish and Game Code § 2081(b)(4).

III. CONCLUSION

In sum, the MSCS contains numerous legal deficiencies that must be remedied in order to ensure that the MSCS is not vulnerable to legal challenge. We strongly urge the CalFed agencies to make the revisions suggested herein and to recirculate this document for public review and comment. Thank you.

Sincerely,

Drew Caputo
Natural Resources Defense Council

Gary Bobker
The Bay Institute of San Francisco

Greg Thomas
Natural Heritage Institute

Steve Johnson
The Nature Conservancy

Jackie McCort
The Sierra Club

Marguerite Young
Clean Water Action

Fran Spivy-Weber
Mono Lake Committee

Arthur Feinstein
Golden Gate Audubon Society

Nick DiCroce
CalTrout

Betsy Reifsneider
Friends of the River

Natural Resources Defense Council
The Bay Institute of San Francisco
Sierra Club
Clean Water Action
Mono Lake Committee
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September 23, 1999

Rick Breitenbach
CALFED Bay-Delta Program
1416 Ninth Street, Suite 1155
Sacramento, CA 95814

Re: **Supplemental Comments on the Revised CALFED Draft Programmatic EIS/EIR**

Dear Mr. Breitenbach,

The above organizations submit these supplemental comments on the draft CalFed Programmatic Environmental Impact Statement/Environmental Impact Report (EIS/EIR) regarding the document's adequacy under the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA). Some of our organizations have submitted separate comments regarding these documents.

I. GENERAL COMMENTS ON PROGRAM EIS/EIR

A. Basic Standards of Adequacy for a Program EIS/EIR

1. CEQA

Under the CEQA Guidelines, the purposes of a program EIR are to:

1) Provide an occasion for a more exhaustive consideration of effects and alternatives than would be practical in an EIR on an individual action;

2) Ensure consideration of cumulative impacts that might be slighted in a case-by-case analysis; and

3) Allow the lead agency to consider broad policy alternatives and programwide mitigation measures at an early time when the agency has greater flexibility to deal with basic problems or cumulative impacts. 14 Cal. Code Regs. § 15168(b).

A program EIR should provide the basis for determining in an initial study whether a subsequent activity may have a significant environmental effect. 14 Cal. Code Regs. § 15168(d)(1). It should also consider "regional influences, secondary effects, cumulative impacts,

broad alternatives and other factors that apply to the program as a whole." 14 Cal. Code Regs. § 15168(d)(2). Finally, a program EIR should contain a comprehensive enough analysis to allow a subsequent project-specific EIR to focus only on the significant new environmental effects caused by the project. 14 Cal. Code Regs. § 15168(d)(3). Accordingly, the CEQA Guidelines state that a program EIR should "deal with the effects of the program as specifically and comprehensively as possible." 14 Cal. Code Regs. § 15168(c)(5).

2. NEPA

The NEPA Guidelines direct federal agencies to prepare program EISs on "broad federal programs such as the adoption of new agency programs or regulations." 40 C.F.R. § 1502.4(b). A program EIS should analyze the broad environmental consequences of a program that covers a wide range of activities. National Wildlife Federation v. Appalachian Regional Comm'n, 677 F.2d 883, 888 (D.C. Cir. 1981). "The thesis underlying programmatic EISs is that a systematic program is likely to generate disparate yet related impacts. This relationship is expressed in terms of 'cumulation' of impacts or 'synergy' among impacts that are caused by or associated with various aspects of one big federal action." *Id.* The program EIS "looks ahead and assimilates broad issues relevant to one program design." *Id.*

As under CEQA, subsequent, project-specific EISs may be tiered onto a program EIS "to eliminate repetitive discussions of the same issues" and to "focus on the actual issues ripe for decision at each level of environmental review." 40 C.F.R. §§ 1500.4(j), 1502.20. "Tiering" is defined as the "coverage of general matters in a broader EIS . . . with subsequent narrower statements . . . incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared." 40 C.F.R. §§ 1508.28, 1502.20.

B. CalFed Program EIS/EIR

In general, the CalFed program EIS/EIR needs to include a more comprehensive consideration of broad program effects, as required by the NEPA and CEQA regulations. This includes discussion of "regional influences, secondary effects, cumulative impacts, broad alternatives and other factors that apply to the program as a whole." 14 Cal. Code Regs. § 15168(d)(2). As written, the document is far too vague and general and provides little useful information for effectively evaluating the myriad environmental impacts of the CalFed program. As such, the document is inadequate to serve its purpose as a basis for future decisionmaking and as a foundation upon which subsequent environmental analysis can tiered.

The EIS/EIR also must contain a specific description of the subsequent environmental review process for program implementation actions. The document generally states that subsequent program actions and facility construction stemming from the programmatic actions "must be developed in compliance with NEPA [and] CEQA." EIS/EIR, p. iv; *see also* p. 1-19. However, the document does not explain how the subsequent environmental review process will function, leaving this critical NEPA/CEQA compliance issue wide open.

The EIS/EIR should include a procedure for environmental review and permitting of CalFed program implementation actions. This procedure should indicate what types of program actions will require tiered, project specific EIS/EIRs; what actions will be considered

categorically exempt or categorically excluded from CEQA and NEPA; and what actions will require a negative declaration, mitigated negative declaration, or finding of no significant impact (FONSI) or mitigated FONSI under CEQA and NEPA. This information is critical to evaluating the success of the CalFed program, since all of the concrete, site-specific environmental analysis necessary to program implementation will be conducted during the subsequent phases of environmental review.

I. PROJECT DESCRIPTION

A. CEQA and NEPA Requirements

CEQA requires an EIR to include a complete and accurate project description. The project description must include: (1) the precise location and boundaries of the proposed project depicted on a detailed map, preferably topographic; (2) a statement of the project's objectives; (3) a general description of the project's technical, economic, and environmental characteristics; and (4) a statement regarding the intended uses of the EIR. 14 Cal. Code Regs. § 15124. An inaccurate, misleading, or curtailed project description prevents the public and the decisionmaking agency from adequately evaluating this project's environmental effects. *See* County of Inyo v. City of Los Angeles, 71 Cal. App. 3d 185, 192-193 (1977) (an "accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient" environmental analysis). NEPA likewise requires an EIS to include a statement of the project's purpose and need. 40 C.F.R. § 1502.13.

B. CalFed Program EIS/EIR

The project description in the EIS/EIR is too general to meet CEQA's requirement for a "complete and accurate" project description and NEPA's project "purpose and need" requirement. The document never describes precisely what actions will be undertaken under each of the eight program elements and three program alternatives, and in what geographic locations these actions will be taken. The program elements and alternatives are described in only the most general terms, making it extremely difficult to effectively evaluate the comparative environmental consequences of these actions.

III. ENVIRONMENTAL IMPACT ANALYSIS

A. Applicable Legal Standards for Impact Analysis and Mitigation

1. CEQA

CEQA requires an EIR to clearly identify and describe the direct and indirect environmental effects[1/] of the project, considering both short term and long term effects. The discussion must include:

[1/] A significant environmental effect is defined as a "substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project, including land, air, water, minerals, flora, fauna, ambient noise, and objects historic or aesthetic significance." 14 Cal. Code Regs. § 15382; *see also* Cal. Pub. Res. Code § 21068.

> the relevant specifics of the area, the resources involved, physical changes, alterations to ecological systems, and changes induced in population distribution [and] concentration, human use of the land (including commercial and residential development), health and safety problems caused by the physical changes, and other aspects of the resources base such as water, scenic quality, and public services.

14 Cal. Code Regs. § 15126.2(a).

An EIR also must analyze the cumulative impacts of the project under consideration when added to other closely related past, present and reasonably foreseeable future projects. 14 Cal. Code Regs. § 15130. "Cumulative impacts" are defined as "two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts." 14 Cal. Code Regs. § 15355. Cumulative impacts may result from "individually minor but collectively significant actions taking place over a period of time." *Id.*

The fact that a project or an aspect of a project may, in and of itself, have a relatively minor impact does not mean that the project will not have significant cumulative impacts. *See* Kings County Farm Bureau v. City of Hanford, 221 Cal. App. 3d 692, 722 (1991). Such a conclusion was expressly repudiated by the court in EPIC v. Johnson, 170 Cal. App. 3d 604, 624-625 (1985):

> To address the cumulative effect issue the Department has taken the tact [sic] that if the adverse effects are minimized to the maximum [extent feasible] on each individual operation, then the total effect on the surrounding area will also be minimized to an acceptable level. This statement is at odds with the concept of cumulative effect, which assesses cumulative damages as a whole, greater than the sum of its parts.

An adequate cumulative impact analysis under CEQA must summarize all past, present and probable future projects (including projects outside of the agency's control). 14 Cal. Code Regs. § 15130(b)(1). The projects discussed must include not only approved projects but projects currently undergoing environmental review. *Id.* Further, the EIR must contain a summary and "reasonable analysis" of the anticipated environmental effects of the these projects, with "specific reference[s] to additional information" and state where that information is available. 14 Cal. Code Regs. § 15130(b)(2); *see also* Kings County Farm Bureau v. City of Hanford, 221 Cal. App. 3d at 729 (holding that cumulative impact analysis must be supported by at least some hard data). Although the discussion need not be as detailed as the discussion of direct impacts of the project, it must be more than a mere conclusion "devoid of any reasoned analysis." Whitman v. Board of Supervisors, 88 Cal. App. 3d 397, 411 (1979).

Finally, CEQA also requires an EIR to include measures to avoid or minimize *each* significant impact identified, including cumulative impacts and the impacts of alternatives. 14 Cal. Code Regs. § 15126.4(a), 15130(b)(3). The discussion must distinguish between measures proposed by the project proponent and those proposed by lead, responsible and trustee agencies. 14 Cal. Code Regs. § 15126.4(a). Where several measures are available to mitigate an impact,

each should be discussed and the basis for selecting a particular measure identified. If a mitigation measure would cause one or more significant impacts in addition to those of the proposed project, these impacts must be discussed as well. Mitigation measures must be fully enforceable through permit conditions, agreements or other legally binding instruments. *Id.*

2. NEPA

NEPA regulations require an EIS to "provide a full and fair discussion of significant environmental impacts." 40 C.F.R. § 1502.1. NEPA regulations require an EIS to include a discussion of direct and indirect impacts of the project and mitigation measures for any significant effects identified. 40 C.F.R. § 1502.16(a), (b), (h); 1502.14(f). "Direct effects" are those which are immediately caused by the action. "Indirect effects" are those which will be caused by the action at a later time, but which are nevertheless reasonably foreseeable. 40 C.F.R. § 1508.8. They include growth inducing effects and other effects related changes in land use patterns. 40 C.F.R. § 1508.8(b). The discussion of impacts must also include an analysis of possible conflict between the proposed action and federal, state, regional and local land use plans and policies. 40 C.F.R. § 1502.16(c).

In addition, an EIS must analyze "cumulative actions, which when viewed together have cumulatively significant impacts." 40 C.F.R. § 1508.25(a)(2). Thus, "[w]here several foreseeable similar projects in a geographical region have a cumulative impact, they should be evaluated in a single EIS." Resources Ltd. v. Robertson, 35 F.3d at 1306; *see also* 40 C.F.R. § 1508.25(a)(3). "Cumulative impact" is defined in the NEPA regulations as the impact on the environment that results from "the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes such other actions." 40 C.F.R. § 1508.7. Thus, a federal agency cannot ignore significant impacts by considering the environmental effects of individual projects in isolation from past and reasonably foreseeable future projects. Inland Empire Public Lands Council, 992 F.2d at 981.

Finally, NEPA requires an EIS to include measures to avoid or minimize *each* significant impact identified, including the impacts of alternatives. 40 C.F.R. § 1502.16(h), 1502.14(f), 1508.25. An EIS also must examine "reasonable options" for avoiding or mitigating any significant cumulative effects identified. 40 C.F.R. § 1508.25.

The analysis of environmental impacts must satisfy a "rule of reason" which requires a "reasonably thorough" discussion of impacts and mitigation measures. Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 352 (1989).

B. CalFed EIS/EIR

The CalFed EIS/EIR fails to meet the above legal requirements for impact analysis and mitigation. For example, several programmatic level decisions that are critical to implementing the Preferred Alternative are not analyzed at all in the EIR/EIS. Instead, they are improperly deferred until a future date. Examples of major deferred decisions include the thirty year governance structure, financing and cost-sharing package, and assurances package. This is wholly inappropriate under CEQA. *See* Stanislaus Natural Heritage Project v. County of

Stanislaus, 48 Cal. App. 4th 182 (1996) (holding that program EIR for phased development project was inadequate because it deferred consideration of water source for the project until subsequent phases of environmental review). Moreover, the document fails to describe how deferred decisions will be made.

The EIS/EIR also fails to accurately and comprehensively describe the direct, indirect and cumulative impacts of a variety of program actions, such as the construction and operation of new storage facilities (and how this will adversely impact implementation of the ERP), construction of the Hood diversion facility; flood control reservations, evaporative losses, etc. Nor does the document adequately evaluate the potential failure to assure implementation of the ERP. For further discussion of the issue areas that are not adequately evaluated in the EIS/EIR, see NRDC comments and attachments thereto (including comments submitted on the July 1998 draft EIS/EIR), submitted herewith.

In addition, for a programmatic level document, the discussion of cumulative impacts of the program as a whole is highly inadequate. Although we applaud the acknowledgment that significant adverse cumulative effects would occur, the document contains mere conclusions "devoid of reasoned analysis." Whitman, 88 Cal. App. 3d at 411. The EIS/EIR states that "[b]ecause of the preliminary phase of most of the projects (environmental reviews have not been initiated, drafted or finalized), comparable environmental information for identifying cumulative impacts was not available." EIS/EIR, p. 3-6. The lack of project-specific environmental analysis however, does not excuse the lead agencies from analyzing the cumulative impacts of CalFed program elements in this document. To the contrary, one of the primary purposes of preparing a programmatic level environmental document is to enable the decisionmakers and the public to assess the cumulative effects of program implementation at an early stage when these impacts can be rectified through alternative program design. National Wildlife Federation v. Appalachian Regional Comm'n, 677 F.2d 883, 888 (D.C. Cir. 1981); 14 Cal. Code Regs. § 15168(b).

IV. ALTERNATIVES ANALYSIS

A. Applicable Legal Standards

1. CEQA

CEQA requires EIRs to describe and evaluate the "comparative merits" of a reasonable range of feasible alternatives to the proposed project and/or to the *location of the project.* 14 Cal. Code Regs. § 15126.6(a). The alternatives selected for analysis must focus only on those that would avoid or substantially reduce the project's significant environmental effects, *even if these alternatives would impede to some degree the attainment of project objectives or would be more costly.* (14 Cal. Code Regs. § 15126.6(a), (b), (f).) The range of alternatives selected must "foster informed decisionmaking and public participation." 14 Cal. Code Regs. § 15126.6(a), (f). One of the alternatives analyzed must include the "no project" alternative. 14 Cal. Code Regs. § 15126(e). The purpose of the no project alternative is to allow decisonmakers to compare the impacts of approving the proposed project with the impacts of not approving the proposed project. *Id.*

The EIR must describe the rationale for selecting the alternatives to be discussed, and identify any alternatives that were rejected as infeasible during the scoping process and why. 14 Cal. Code Regs. § 15126.6(a), (c). The EIR's alternatives analysis must include "sufficient information about each alternative to allow *meaningful* evaluation, analysis and comparison with the proposed project." 14 Cal. Code Regs. § 15126.6(d) (emphasis added).) If an alternative would cause one or more significant effects in addition to the proposed project, the EIR must evaluate these impacts but in less detail than those of the proposed project. *Id.* Finally, the analysis must select an "environmentally superior" alternative. (14 Cal. Code Regs. § 15126.6(e)(2). If the "no project" alternative is environmentally superior, the EIR must select another alternative as environmentally superior. *Id.*

2. NEPA

NEPA regulations require the EIS to "rigorously explore and objectively evaluate all reasonable alternatives," and to explain why alternatives not analyzed were eliminated from detailed consideration. 40 C.F.R. § 1502.14(a). Consideration of alternatives is the "heart" of an EIS. 40 C.F.R. § 1502.14. The EIS must therefore "devote substantial treatment to each alternative considered in detail so that reviewers may evaluate their comparative merits." 40 C.F.R. § 1502.14(b). It also must explain how each alternative will or will not achieve the policies of NEPA and other relevant environmental laws and policies. 40 C.F.R. § 1502.2(d). The analysis must include the alternative of no action, as well as alternatives not within the federal lead agency's jurisdiction. 40 C.F.R. § 1502.14(c), (d). Finally, the analysis must identify the agency's preferred alternative and include appropriate mitigation measures for each alternative analyzed in detail. 40 C.F.R. § 1502.14(e), (f).

The adequacy of an EIS' discussion of alternatives is determined by a "rule of reason." There is no minimum number of alternatives that must be discussed. Laguna Greenbelt v. U.S. Dep't of Transp., 42 F.3d 517, 524 (9th Cir. 1994). However, the existence of a viable but unexamined alternative renders the EIS inadequate. Mumma, 956 F.2d at 1519. An EIS will generally be held adequate if it evaluates a "reasonable range" of alternatives. The range is dictated by "nature and scope of the proposed action," and must be sufficient to permit the agency to make a "reasoned choice." Alaska Wilderness Recreation and Tourism v. Morrison, 67 F.3d 723, 729 (9th Cir. 1995).

B. CalFed EIS/EIR

The EIS/EIR fails to analyze a reasonable range of alternatives under CEQA and NEPA. The EIS/EIR fails to adequately explore alternative means of achieving the ecosystem restoration objectives of the CalFed program, within the confines of the common program elements. In addition, while the level of environmental restoration remains the same under each alternative, there is no alternative that seriously considers reduced exports from the Delta. The EIS/EIR states that "although program elements common to all alternatives would improve and increase aquatic habitat and improve ecological processes in the Bay-Delta," implementation of the conveyance element would have significant and unavoidable impacts under all alternatives. EIS/EIR, p. 6.1-57. The EIS/EIR must explore reasonable alternatives for avoiding or reducing these impacts.

In addition, as a related point, each of the alternatives analyzed in the EIS/EIR has *greater* adverse environmental impacts than the Preferred Alternative. This is inconsistent with CEQA and NEPA, which require an EIS/EIR to consider only those alternatives that are capable of reducing the proposed action's significant environmental effects.

In addition, the No Project/No Action alternative relies on an outdated and flawed 1995 baseline (using DWR's Bulletin 160-93) and speculative assumptions (e.g. implementation of the Monterey Agreement, the validity of which is currently being litigated and certain SWRCB actions). The effect of these flaws is that the EIS/EIR overstates the demand for south of Delta exports, and fails to discuss the benefits to agriculture of receiving the re-directed water. This is inconsistent with the CEQA Guidelines, which require the no project alternative to discuss the conditions existing at the time the notice of preparation is published, as well as "what would *reasonably* be expected to occur in the foreseeable future if the project were not approved." 14 Cal. Code. Regs. § 15126.6(e)(2). The means that the no project alternative may not, as the EIS/EIR does here, rely on outdated baseline information, nor may it rely on speculative assumptions about potential future actions.

The No Project/No Action alternative is bifurcated into a so-called "reduced demand" alternative and a "100% contract deliveries" alternative. It is unclear whether the "reduced demand" alternative equates with reduced pumping from the Delta. If not, then the core underlying assumption for the No Project/No Action alternative is 100% contract deliveries, which skews the entire analysis. The EIS/EIR uses the level of export pumping as the primary measure of success in achieving the goal of reducing conflicts in the system, and evaluating the comparative merits of the other alternatives.

The EIS/EIR also fails adequately to compare the No Project/No Action alternative with existing conditions. The two are not one and the same. *See* 14 Cal. Code Regs. § 15126.6(e). In some places, the EIS/EIR states that there are few differences between the No Project alternative and existing conditions. However, in other places, the document concedes that increased pumping could range from 370 TAF to over 1 MAF (pp. 5-3 - 5-21) above current levels of pumping. This major discrepancy is not adequately addressed in the EIS/EIR.

V. CONCLUSION

In sum, the EIS/EIR fails to meet basic requirements of adequacy under NEPA and CEQA. The document does not:

- meet basic requirements for a program EIS/EIR;
- include a sufficiently comprehensive project description;
- contain an adequate discussion of direct, indirect and cumulative impacts of each program element and action, nor does it contain a sufficient discussion of the cumulative impacts of the program as a whole;
- analyze a reasonable range of alternatives that will avoid or minimize the program's significant environmental effects, and contains a flawed no project alternative.

The EIS/EIR therefore must be revised to address these issues. Thank you for your consideration of our views.

Sincerely,

Drew Caputo
Natural Resources Defense Council

Gary Bobker
The Bay Institute of San Francisco

Jackie McCort
The Sierra Club

Marguerite Young
Clean Water Action

Fran Spivy-Weber
Mono Lake Committee

Arthur Feinstein
Golden Gate Audubon Society

Nick DiCroce
CalTrout

Betsy Reifsnider
Friends of the River

SEP 2 8 1999
1403

COUNTY OF NEVADA
STATE OF CALIFORNIA

950 Maidu Avenue • Nevada City, California 95959-8617
Telephone: (530) 265-1480 • *FAX: (530) 265-1234*

BOARD OF SUPERVISORS

Elizabeth Martin
Supervisor, 4th District
Residence Phone: (530) 432-9093
E-mail izzy@oro.net

September 23, 1999

Rick Breitenbach
CALFED Bay Delta Program
1416 Ninth Street Suite 1155
Sacramento, CA 95814

Dear Mr. Breitenbach:

Thank you for this opportunity to submit comments regarding the Draft Programmatic EIS/EIR.

The County of Nevada contains within its borders the watersheds for the South Fork of the Yuba, as well as much of the watershed of the middle fork. We also sit at the headwaters of much of the Bear River. As such, CALFED's final decisions regarding California's water future affects us very directly.

Many of your recommendations and actions are consistent with our overall goals and policies for water and land use within our county. We are particularly pleased that CALFED has awarded funding to groups within our region that are working on watershed restoration and consensus building around flood protection in both the Bear and Yuba River watersheds. Thank you for helping us to restore what is a truly magnificent, although terribly ravaged, river system and watershed.

The Board of Supervisors has adopted a number of resolutions and policies that speak to the many issues raised in your programmatic document. I am forwarding these to you to ensure that these issues are considered in your next series of decisions. These include:

1. Protecting the South Yuba River: Nevada County is the sponsor of legislation recently passed by the California Legislature that would designate the South Fork of the Yuba River as part of the state's wild and scenic river system. This legislation, if signed by Governor Davis, will prohibit further consideration of several dams now under study by the Yuba County Water Agency (YCWA). This designation is consistent with CALFED's environmental document. Attached is our resolution authorizing sponsorship of this designation. Attached are resolutions 9943 and 9979 supporting and authorizing sponsorship.

2. Protecting the Middle Fork: In recent technical comments submitted to YCWA as part of their flood control studies our Board of Supervisors voted to oppose further consideration of a dam at

Freeman's Crossing on the Middle Fork of the Yuba, near the town of Camptonville. We also made a number of other comments in that document. Our comments are all consistent with the CALFED programmatic EIR. Both the resolution, 99362, and the technical comments are attached for your information.

3. Habitat protection and restoration of steelhead and salmon runs: The Yuba is home to one of the last remaining runs of wild steelhead and fall run salmon. In CALFED's efforts to protect this diminishing species – and to restore it to historic levels – there is an active dialogue around the future of Englebright Reservoir and dam. The Nevada County Board of Supervisors have considered the many facets of this complex issue and has addressed some of them in Board resolution 99193, attached. This resolution calls for quick completion of the studies association with this issue, and protection of the businesses, private homes and environmental qualities that depend upon Englebright.

4. Watershed restoration: We are partners in a several collaborative efforts that are now being funded or considered by CALFED, including the Yuba Watershed Council and the Yuba Tools for Flood Protection project. We thank you for funding these important efforts and look forward to continued work with these partners. Our most recent resolution, 99428, authorizing our participation in the Watershed Council is attached.

Thanks again for this opportunity to participate in decisions around California's complex water policy debate. We applaud your efforts to find long term, sustainable solutions to California's water quality and quantity problems.

Please feel free to contact me if you have any questions about these issues.

Sincerely,

ELIZABETH J. MARTIN
Supervisor, 4th District

Attachments: Resolutions 9943, 9979, 99362, 99193, 99428
Letter to YCWA July 27, 1999

cc: Shawn Garvey, SYRCL
Steve Evans, FOR
David Munro, Save Englebright Lake

1403

RESOLUTION No. 99-43

OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA

A RESOLUTION SUPPORTING DESIGNATION OF THE SOUTH YUBA RIVER BETWEEN SPAULDING & ENGLEBRIGHT RESERVOIRS AS A WILD & SCENIC RIVER

WHEREAS, the South Yuba River possesses extraordinary and outstandingly remarkable scenic, recreational, historic and cultural resources, among them:

- A profound, unparalleled and irreplaceable natural beauty, whose wildlife, swimming holes, canyons and sculptured boulders possess a unique spiritual, emotional and cultural significance for nearby communities and visitors alike
- Documented historical significance as well as numerous sites listed and eligible for listing in the National Register of Historical Places, including the Bridgeport Covered Bridge
- The South Yuba River State Park
- The Independence Trail, the longest wheelchair-accessible wilderness trail in the country; and

***WHEREAS,** the South Yuba River is one of Nevada County's most outstanding and valuable natural assets, and has been declared in the County's General Plan Update a unique recreational resource that attracts an estimated 700,000 visitor-days and $20 million in economic activity for Nevada County annually; and

WHEREAS, the South Yuba River

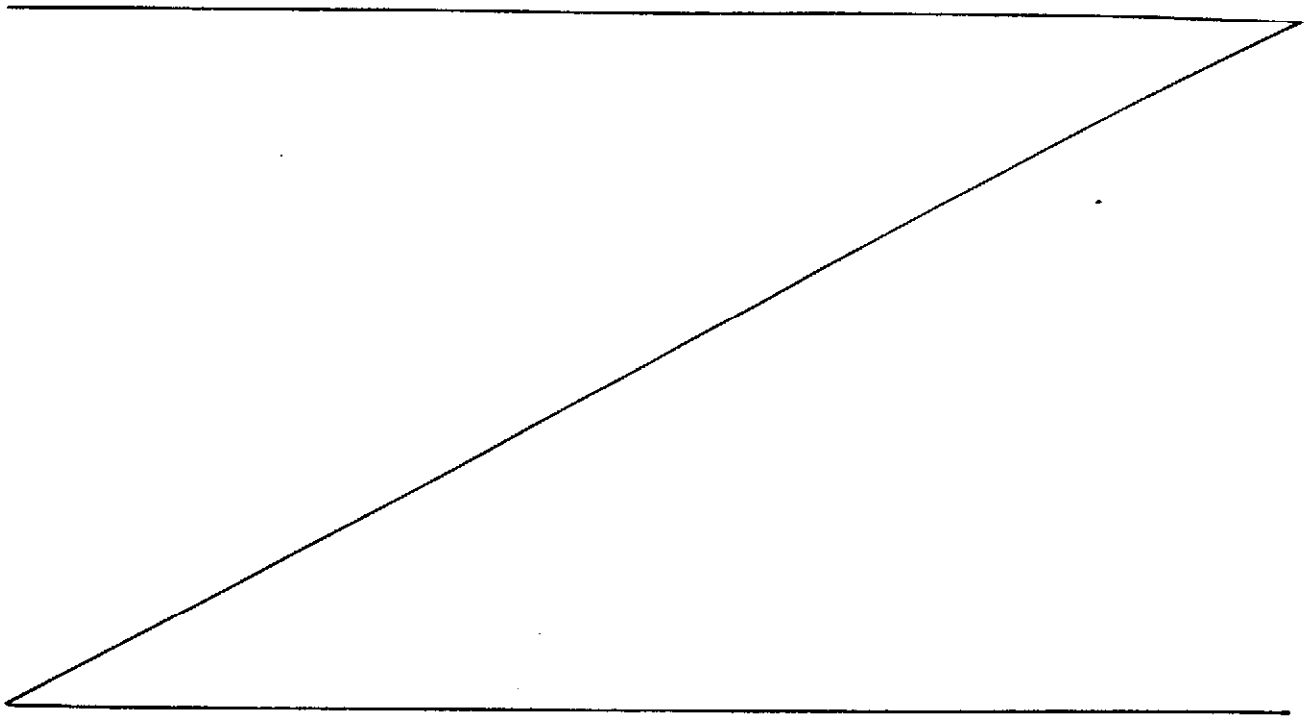
- has been determined by the Tahoe National Forest, in its draft river study report, suitable for inclusion in the National Wild & Scenic Rivers System; and
- has been determined an environmentally, economically and technologically low-priority site for additional, large-scale flood control and water storage projects, and that more effective flood control projects exist elsewhere in the Yuba Watershed.

WHEREAS, the Yuba River's recovery from the severe environmental degradation of the Gold Rush and its attendant hydraulic mining practices is a living testament to the power, genius and fortitude of nature and its creatures; and

WHEREAS, the people of Nevada County, in the spirit of local decision making and control, have expressed, through their years of dedicated labor, their support for protection for the South Yuba River from dams, diversions and reservoirs that might harm its natural integrity and threaten private property rights.

NOW, THEREFORE, BE IT RESOLVED, the Nevada County Board of Supervisors does hereby express its support for Wild & Scenic River designation for the South Yuba River between Spaulding and Englebright Reservoirs, along with all protections extended by such designation under local, state and federal laws and regulations.

**(Based upon a report from the State Department of Parks & Recreation.)*



PASSED AND ADOPTED by the Board of Supervisors of the County of Nevada at a regular meeting of said Board, held on the 19th day of January, 19 99, by the following vote of said Board:

Ayes: Supervisors Peter Van Zant, Bruce Conklin, Elizabeth Martin, Sam Dardick.
Noes: Karen Knecht.
Absent: None.
Abstain: None.

ATTEST:
CATHY R. THOMPSON
Clerk of the Board
By: Cathy R. Thompson

Chairman

DATE	COPIES SENT TO
1-20-99	SYRCL BP.
	USFS c/o Phil Hornig
	Congressman Herger
	NID
	County of Yuba

RESOLUTION No. 99-79

OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA

A RESOLUTION SPONSORING PROPOSED LEGISLATION DESIGNATING THE SOUTH YUBA RIVER BETWEEN SPAULDING AND ENGLEBRIGHT RESERVOIRS AS A COMPONENT OF THE CALIFORNIA WILD & SCENIC RIVER SYSTEM

WHEREAS, the South Yuba River possesses extraordinary and outstandingly remarkable scenic, recreational, historic and cultural resources; and

WHEREAS, the Nevada County Board of Supervisors, on January 19, 1999, passed Resolution 99-43 supporting Wild & Scenic River designation for the South Yuba River between Spaulding and Englebright Reservoirs; and

WHEREAS, proposed legislation is now being prepared to designate this section of the South Yuba River as a component of the California Wild & Scenic River System.

NOW THEREFORE, BE IT RESOLVED, the Nevada County Board of Supervisors, hereby sponsors legislation to amend the Public Resources Code, relating to wild and scenic rivers as follows:

SECTION 1. Section 5093.54 is amended to read:

"(g) The South Yuba River: From Lang Crossing to the confluence of Englebright Reservoir below Bridgeport."

Former subd (g) would be redesignated to be subd (h).

SECTION 2. Section 5093.545 of the Public Resources Code is amended to read:

"(1) The South Yuba River:

(1) The South Yuba River from Lang Crossing to the confluence with Fall Creek: Scenic

(2) The South Yuba River from the confluence with Fall Creek to the confluence with Jefferson Creek below the town of Washington: Recreational

(3) The South Yuba River from the confluence with Jefferson Creek to Edwards Crossing: Scenic

(4) The South Yuba River from Edwards Crossing to the upper limit of Englebright Reservoir below Bridgeport: Scenic"

PASSED AND ADOPTED by the Board of Supervisors of the County of Nevada at a regular meeting of said Board, held on the 16th day of February, 19 99, by the following vote of said Board:

Ayes: Supervisors Peter Van Zant, Bruce Conklin, Elizabeth Martin, Sam Dardick.
Noes: Karen Knecht.
Absent: None.
Abstain: None.

ATTEST:
CATHY R. THOMPSON
Clerk of the Board
By: Cathy R. Thompson

Chairman

DATE	COPIES SENT TO
2-17-99	Senator Sher
	Senator Leslie Assemblyman Aanestad
	SYRCL NID
	CA Parks & Rec. BLM
	USFS
	County of Yuba

RESOLUTION No. 99362

OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA

RESOLUTION OPPOSING CONSTRUCTION OF NEW DAMS AND RESERVOIRS IN NEVADA COUNTY ON EITHER THE SOUTH YUBA OR MIDDLE YUBA RIVER AT FREEMAN'S AND EDWARDS CROSSING, OR THE LOWER NARROWS, AND REQUESTING THE YUBA COUNTY WATER AGENCY CEASE FURTHER CONSIDERATION OF THESE ALTERNATIVES IN IT'S SUPPLEMENTAL FLOOD CONTROL PROGRAM STUDY PHASE II REPORT

WHEREAS, the Yuba County Water Agency is proposing five new dams or diversions with reservoirs that could impact Nevada County as possible flood control options in it's Supplemental Flood Control Program Study Phase II Report, and;

WHEREAS, Nevada County supports the Yuba County Water Agency's effort to provide flood control to Yuba County and surrounding downstream area residents, and;

WHEREAS, Nevada County does not believe dams and reservoirs in Nevada County will provide the most viable solution to the serious problem of downstream flood control, and;

WHEREAS, these proposed alternatives would include a dam and reservoir at Freeman's Crossing where Highway 49 crosses the Middle Yuba River near Oregon Creek, a dam and reservoir at Edwards Crossing on the South Yuba River, and a dam and multi-purpose reservoir at the Lower Narrows, and;

WHEREAS, these flood control options would seriously impact Nevada County's economy and natural resources, destroy the unique character and free flowing nature of the South and Middle Yuba Rivers in Nevada County, and displace people from their homes and property, and;

WHEREAS, opposition to the placement of dams on the South Yuba River canyon is consistent with the 1995 Nevada County General Plan, Volume 1, Chapter 5, Objective 5.8, Policy 5.21.

NOW, THEREFORE, BE IT RESOLVED, the Nevada County Board of Supervisors opposes construction of any new dam and reservoir on either the Middle or South Yuba River at either Freeman's and Edwards Crossing and the Lower Narrows.

BE IT FURTHER RESOLVED, the Yuba County Water agency is requested to cease further consideration of Alternatives D, E, and F in their Supplemental Flood Control Program, Study Phase II report, proposing dams and reservoirs at these locations.

PASSED AND ADOPTED by the Board of Supervisors of the County of Nevada at a regular meeting of said Board, held on the 27th day of July, 19 99, by the following vote of said Board:

Ayes: Supervisors Van Zant, Martin, Dardick.
Noes: Knecht.
Absent: Conklin.
Abstain: None.

ATTEST:
CATHY R. THOMPSON
Clerk of the Board
By: Cathy R. Thompson

Chairman

DATE	COPIES SENT TO
7-27-99	Yuba County Water Agency
	Yuba County Board of Supervisors

"§ 12205. Storage of water; integration of operation and management of release of water

It is the policy of the State that the operation and management of releases from storage into the Sacramento-San Joaquin Delta of water for use outside the area in which such water originates shall be integrated to the maximum extent possible in order to permit the fulfillment of the objectives of this part."

Recognizing the massiveness of the State Water Resources Development System and the tremendous impacts of exporting millions of acre feet of water from the Delta, the California Legislature imposed special responsibilities on the export projects which are currently the SWP and CVP. Water Code sections 12200 et seq. require that the projects provide "salinity control" for the Delta; that the projects integrate to the maximum extent possible releases from storage to maintain an adequate water supply in the Delta sufficient to maintain and expand agriculture, industry, urban and recreational development in the Delta area, provide a common source for exports; and that no water shall be exported which is necessary to meet the Delta requirements.

The DEIS fails to acknowledge or describe the Salinity Control and Delta water supply obligations of the SWP and CVP as part of the base case responsibility of the projects.

The interpretation of the 1959 Delta Protection Act should not be a subject of significant dispute. DWR, the holder of the water rights for the SWP, acknowledged its responsibilities early on.

Department of Water Resources Bulletin No. 76, Preliminary Edition December 1960 Report to the California Legislature at page 11 provides:

"The coordinated use of surplus water in and tributary to the Delta and of regulated or imported supplements to this supply, as required, is referred to as the Delta Pooling Concept. Under this concept of operation the State will ensure a continued supply of water adequate in quantity and quality to meet the needs of export water users. Advantage will be taken of surplus water available in the Delta, and as the demand for water increases and the available surplus supply is reduced by further upstream uses, the State will assume the responsibility of guaranteeing a firm supply of water, which will be accomplished by construction of additional storage facilities and import works. At the same time, the water needs of the Delta will be fully met."

At page 12, it is stated:

"Further increase in water use in areas tributary to the Delta will worsen the salinity incursion problem and complicate the already complex water rights situation. To maintain and expand the economy of the Delta, it will be necessary to provide an adequate supply of good quality water and protect the lands from the

effects of salinity incursion. In 1959 the State Legislature directed that water shall not be diverted from the Delta for use elsewhere unless adequate supplies for the Delta are first provided."

At page 26:

"The California Water code specifies that one of the functions of the State Water Resources Development System is to provide salinity control and an adequate water supply in the Delta. If it is in the public interest to provide substitute supplies in lieu of salinity control, no added financial burden shall be placed on the local water users as a result of such substitution. the code also declares that water to which the Delta is entitled shall not be diverted. It is clearly established that supplying water for the Delta must be a primary and integral function of the State Water Facilities."

The DEIS fails to acknowledge that Alternative 3 would violate existing law.

The peripheral canal in CAL/FED Alternate 3 does not "make supplying water to the Delta a primary and integral function of the State Water Facilities." It does not even have mechanisms for releases of water to the Delta. The primary purpose is to improve water quality for exports and increase the quantity that can be exported. The result is degradation of water quality in much of the Delta.

The peripheral canal in CAL/FED Alternate 3 does not integrate the releases from storage for export to the maximum extent possible in order to permit fulfillment of the objectives of Water Code section 12200 et seq. to wit: maintenance of the "common pool", "Delta salinity control", "adequate supply in the Delta" and "limiting exports to surplus water".

The DEIS fails to set forth and evaluate the requirements of the Davis-Dolwig Act (Water Code sections 11900 et seq.).

The Davis-Dolwig Act added by Statutes of 1961 appears to recognize and establish the desire to provide a complete plan for both preservation and enhancement of fish and wildlife as related to the state water projects. Water Code section 11905 makes it clear that the act applies to both the SWP and CVP as well as other State projects and other State-Fed projects. The costs for preservation of fish and wildlife preservation are reimbursable costs of the project allocable to prices, rates and charges for water and power. The costs for enhancement of fish and wildlife or for the development of public recreation are not reimbursable from water and power contractors but rather are a burden to be borne generally by the State taxpayers.

Consistent with Water Code section 12200 et seq., there was no contemplation that the burden for preservation of fish and wildlife in the Delta be shifted to other water right holders. It is equally apparent that "preservation" is broader than "mitigation" and under no circumstance is it justifiable for mitigation of SWP and CVP imports to be shifted to others.

The SWP and CVP impacts on fish, wildlife, water quality (including San Joaquin River water quality), water levels, flow direction and other aspects of the environment are not specifically identified or quantified in the DEIS. The failure to identify and quantify the SWP and CVP responsibilities allows the burden to be shifted to others.

Mitigation of impacts such as destruction of Delta tributary spawning habitat by SWP or CVP reservoirs, reduction of spring and summer fresh water flows to Suisun Bay, isolation of Suisun Marsh from Suisun Bay, export pumping induced reverse flows and entrainment at the SWP and CVP pumps is clearly the responsibility of the SWP and CVP.

It is totally inappropriate to shift the burden to others. The DEIS contains numerous examples of such a shift. One example is the conversion of Delta lands to tidal marsh to mitigate for fishery impacts caused by SWP and CVP export pumping. Such a proposition circumvents not only the requirements of the Delta Protection Act but also the requirement that the projects preserve fish and wildlife and fully mitigate project impacts. The net effect is to destroy the very water uses intended to be protected.

The DEIS fails to set forth and evaluate the requirements of the "Watershed Protection Act" (Water Code sections 11460, et seq.).

Water Code section 11460 provides as follows:

"§ 11460. Prior right to watershed water

In the construction and operation by the department of any project under the provisions of this part a watershed or area wherein water originates, or an area immediately adjacent thereto which can conveniently be supplied with water therefrom, shall not be deprived by the department directly or indirectly of the prior right to all of the water reasonably required to adequately supply the beneficial needs of the watershed, area, or any of the inhabitants or property owners therein."

Water Code section 11128 provides as follows:

"§ 11128. Limitations

The limitations prescribed in Section 11460 and 11463 shall also apply to any agency of the State or Federal Government which shall undertake the construction or operation of the project, or any unit thereof, including, besides those specifically described, additional units which are consistent with and which may be constructed, maintained, and operated as a part of the project and in furtherance of the single object contemplated by this part."

The DEIS should quantify the needs in the "areas of origin" including the needs for

Salinity Control and mitigation of SWP and CVP impacts to determine the quantity of water, if any, that might be available for export. The base case should incorporate all actions necessary to comply with existing law. Not only does the DEIS base case fail to incorporate features necessary to comply with existing law but the DEIS does not even include an alternative which complies with existing law.

The DEIS is premised on the unsupported assumption that fish and wildlife can be restored while the SWP and CVP export present and even greater quantities of water from the Sacramento-San Joaquin Delta basin.

The failure of the DEIS to identify and quantify the SWP and CVP impacts and the measures necessary to mitigate the same results in no real analysis of the impacts and solutions.

There should be at least one alternative which analyzes reduction in exports from the Delta. With a good program of water conservation, water reuse, desalting of brackish and in some cases ocean waters, it is possible for all major urban areas importing Delta water to reduce their demands on the Delta. The range of reduction could progress from no demand in dry and critical years to no demand at any time.

The many uncertainties associated with correcting environmental damage and restoring an increasing list of endangered species will demand countless years of adaptive management and experimentation. It is our view that Northern California water supplies will be increasingly needed to repair environmental damage and to meet the growing needs of Northern California.

The planning upon which the State's Water Resources Development System was based included sequential construction of on-stream storage facilities on north coast rivers thereby capturing surplus waters from other basins to increase the water supply available in a "common pool" in the Delta for both in-basin and export uses. Such planning is no longer viewed as an acceptable approach and the current effort is directed at increasing extractions from the already highly developed watersheds tributary to the Delta. The heavy emphasis on water transfers, Delta conveyance and increased Delta exports will aggravate rather than resolve the already identified problems.

Any plan which results in the destruction of one part of our State to serve the needs of another part is short-sighted and clearly not in the public interest.

A fair approach would require that the area enjoying the benefit of development bear the burdens. The promise of no redirected impacts should be a reality, not just another hollow promise.

DEIS should incorporate alternatives which set forth for each county or region importing water a plan to achieve water self sufficiency with a progressively diminishing supply of imported water. The plans should include a prohibition of new development which is dependent upon imported water. One alternative variant should include the incremental cost of the water

supply for the new development being borne by the new development. The self sufficiency plans should incorporate: 1) water conservation; 2) water reclamation, including desalting brackish and if necessary sea water; 3) higher levels of treatment of sewage effluent to allow for safe use of effluent for irrigation of golf courses and landscaping, industrial use, and in suitable cases human consumption; 4) installation of dual water systems particularly in new developments; 5) installation of brine lines; and 6) improvements to water treatment facilities so that water from less desirable sources can be beneficially used. Change of use of wastewater to avoid increased levels of treatment should not be allowed.

The avoided energy costs and water losses resulting from conveyance and conveyance-related storage should offset some of the costs of such conservation, desalting and other measures. We would expect the economic feasibility of self sufficiency for areas planned for municipal and industrial uses to be greater than for those areas limited to agricultural uses.

A plan which provides self sufficiency for areas importing water for municipal and industrial uses would substantially reduce the need to transfer water from, convert or otherwise destroy agricultural areas and could make water available for environmental purposes without the need for additional storage.

Such a plan could reduce the regional conflicts as well as the conflicts between instream uses and the uses dependent upon water storage.

The DEIS fails to adequately address restoration of the San Joaquin River and incorrectly assumes that the so-called "San Joaquin River Agreement" or "Letter of Intent to Resolve San Joaquin River Issues" is an "Agreement on San Joaquin River Protection". (Vol. 2, page 134).

The proposed "San Joaquin River Agreement" is directed at providing water for VAMP. VAMP is basically an experiment to determine the relationship between a 30 day Spring pulse flow at Vernalis and export pumping rates and the survival of out-migrating fall-run salmon smolts. VAMP also includes some water for fall-run salmon attraction flows in October. The VAMP does not address the needs of fall-run salmon except at Vernalis for 31 days in the Spring and 30 days in October and does not address the needs of other fish species. The "San Joaquin River Agreement" does not address the water quality needs of the San Joaquin River at Vernalis or at any other upstream or downstream location.

A comprehensive plan for restoration of the San Joaquin River upstream to at least Friant Dam needs to be developed. The plan should address water quality including temperature and flow on the mainstem and each of the tributaries. The plan should address the needs of Agriculture and M & I users as well as all of the fish species. Salinity and dissolved oxygen standards must be included among the parameters to be met.

The DEIS fails to recognize the increased consumption of water resulting from the conversion of agricultural lands to wetlands.

DEIS Vol. 2, page 70 provides:

> "Conversion of these agricultural lands would also reduce water diversions (i.e., loss of water and juvenile fish)."

Agricultural operations typically require that the land surface is dry for much of the year and for many crops without vegetation for portions of the year. If you compare agricultural use with wetland habitat use, you can expect "loss of water" to be greater with the wetland habitat use. Attached hereto is Table A-5 from DWR Bulletin 168 - October 1978 - Sacramento Valley Water Use Survey 1977. Although some variation in the specific numbers can be expected, the relative differences between the various land use categories are generally representative. If, for example, you compare field corn at 33.3 inches with riparian vegetation and water surface at 67.5 inches, the difference is 34.2 inches which is about 3 acre feet per acre. For general discussion purposes, a conservative estimate would be 2 acre feet per acre. The conversion of 130,000 acres of Delta lands from agriculture to wetlands can be expected to increase water demand by about 260,000 acre feet per year. For comparison purposes, the firm yield of a project like Oroville Dam in the event of a reoccurrence of hydrology similar to the 1928 through 1934 period would be about 220,000 acre feet.

In Delta storage should be deleted from further consideration.

The Central Delta Water Agency has concluded that it is impossible to secure adequate assurances that adjoining island lands and levees will not be damaged and therefore the loss of agricultural land will be greatly in excess of the actual reservoir acreage.

The DEIS ecosystem restoration plan seeks to convert a substantial acreage of Delta agricultural land to habitat greatly in excess of what we believe to be reasonable. The additional loss of Delta agricultural land for water storage would unnecessarily add to an already unacceptable burden.

Other Concerns

Attached hereto is an OUTLINE OF PRELIMINARY CAL/FED RELATED CONCERNS AND COMMENTS which are directed to the subject Draft EIS. For the sake of brevity, we have not restated or embellished each of the concerns, but rather incorporate the same in these comments by reference.

Yours very truly,

DANTE JOHN NOMELLINI
Manager and Co-Counsel

TABLE A-5
1976-77 Estimated Crop Et Values
Delta Service Area
(in inches)

Land Use Category	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sep.	Total Oct.76-Sep.77	Oct.77	Total Nov.77-Oct.77
Sacramento-San Joaquin Delta															
Irrigated Pasture	3.2	1.5	1.0	0.7	1.5	3.6	5.4	4.8	6.9	7.7	6.4	4.7	47.4	3.4	47.6
Alfalfa	3.2	1.5	1.0	0.7	1.5	3.2	4.9	4.4	6.5	7.5	6.5	4.9	45.8	3.4	46.0
Deciduous Orchard (Fruits & Nuts)	2.6	1.5	1.0	0.7	1.5	2.7	3.8	4.0	6.1	7.4	6.1	4.3	41.7	2.6	41.7
Tomatoes	2.4	1.5	1.0	0.7	1.5	1.9	2.2	2.6	4.0	8.2	6.0	2.3	34.3	1.9	33.8
Sugar Beets	2.4	1.5	1.0	0.7	1.5	1.9	2.2	3.7	7.6	8.3	6.4	4.4	41.6	2.4	41.6
Grain Sorghum (Milo)	2.4	1.5	1.0	0.7	1.5	1.9	2.2	2.0	5.9	7.3	4.3	2.5	33.2	1.9	32.7
Field Corn	2.4	1.5	1.0	0.7	1.5	1.9	2.2	2.3	5.7	6.9	5.1	2.6	33.8	1.9	33.3
Dry Beans	2.4	1.5	1.0	0.7	1.5	1.9	2.2	1.7	5.7	6.2	2.7	2.5	30.0	1.9	29.5
Safflower	2.4	1.5	1.0	0.7	1.5	1.9	2.5	4.8	8.7	7.7	4.4	2.5	39.6	1.9	39.1
Asparagus	2.4	1.5	1.0	0.7	1.5	1.9	2,2	1.0	3.5	7.7	6.4	4.7	34.5	2.4	34.5
Potatoes	2.4	1.5	1.0	0.7	1.5	1.9	2.2	1.7	4.3	7.4	5.5	2.8	32.9	1.9	32.4
Irrigated Grain	2.4	1.5	1.0	0.7	2.0	4.3	5.7	3.1	1.8	1.0	1.0	1.6	26.1	1.6	24.7
Vineyard	2.4	1.5	1.0	0.7	1.5	1.9	2.2	2.8	5.3	6.5	5.3	3.4	34.5	2.4	34.5
Rice	3.2	1.5	1.0	0.7	1.5	1.9	2.8	5.6	8.8	9.8	8.1	5.5	50.4	3.4	50.6
Sudan	2.4	1.5	1.0	0.7	2.0	4.3	5.7	4.8	6.9	7.7	4.9	4.7	46.6	2.4	46.6
Misc. Truck	2.4	1.5	1.0	0.7	1.5	1.9	3.2	4.6	6.7	7.4	5.2	3.7	39.8	1.9	39.3
Misc. Field	2.4	1.5	1.0	0.7	1.5	1.9	2.2	2.4	6.1	7.4	5.0	1.9	34.0	1.9	33.5
Double Cropped with Grain															
Sugar Beets	2.4	1.5	1.0	0.7	2.0	4.3	5.7	3.1	1.8	4.2	5.2	5.8	37.7	3.4	38.7
Field Corn	2.4	1.5	1.0	0.7	2.0	4.3	5.7	3.1	1.8	4.3	6.3	6.1	39.2	2.7	39.5
Grain Sorghum (Milo)	2.4	1.5	1.0	0.7	2.0	4.3	5.7	3.1	1.8	2.7	6.1	5.2	36.5	1.9	36.0
Sudan	2.4	1.5	1.0	0.7	2.0	4.3	5.7	3.1	3.6	7.7	4.9	4.7	41.6	1.9	41.1
Dry Beans	2.4	1.5	1.0	0.7	2.0	4.3	5.7	3.1	3.1	7.6	3.5	1.5	36.4	1.9	35.9
Tomatoes	2.4	1.5	1.0	0.7	2.0	4.3	5.7	3.1	2.3	6.6	6.0	5.2	40.8	1.9	40.3
Lettuce	2.4	1.5	1.0	0.7	2.0	4.3	5.7	3.1	4.1	7.4	5.3	4.9	42.4	2.4	42.4
Misc. Truck	2.4	1.5	1.0	0.7	2.0	4.3	5.7	3.1	2.3	6.6	6.0	5.2	40.8	2.4	40.8
Misc. Field	2.4	1.5	1.0	0.7	2.0	4.3	5.7	3.1	4.1	7.4	5.3	4.9	42.4	3.4	43.4
Fallow Lands 1/	2.4	1.5	1.0	0.7	1.4	1.0	1.0	1.0	1.0	1.0	1.0	1.0	14.0	1.0	12.6
Native Vegetation 2/	2.4	1.5	1.0	0.7	1.4	3.7	3.8	2.1	2.3	2.6	2.3	2.0	25.8	1.6	25.0
Riparian Veg. & Water Surface	4.6	2.4	1.4	0.8	1.9	4.5	7.4	6.6	9.7	11.8	9.7	7.0	67.8	4.3	67.5
Urban	1.6	0.8	0.6	0.7	1.0	1.0	1.9	2.4	2.4	2.5	2.4	1.9	19.2	1.6	19.2

1/ Applies also to nonirrigated grain.
2/ Applies also to nonirrigated orchards and vineyards

Metric conversion: inches times 25.4 equals millimetres.

TABLE A-6
Annual Crops
...tion (Consumptive Use) Values

SEP 2 8 1999 1405

Rio Alto Water District

P.O. Box 5068, Cottonwood, California 96022
Telephone 530-347-3835 • Fax 530-347-1007

September 23, 1999

Mr. Lester Snow, Executive Director
CalFed Bay-Delta Program
1416 Ninth Street, Suite 1155
Sacramento, CA 95814

Dear Mr. Snow:

Attached you will find a "mailed" copy of the "Northern Sacramento Valley CalFed Advisory Group Comment Letter of September 1, 1999", the original of which was submitted to you via U.S. Postal Service over-night delivery on September 22, 1999.

This September 1st letter, the product of input from a large number of water professionals, represents the views and concerns of the water interests and stakeholders of the Northern Sacramento Valley - views that CalFed needs to recognize and understand; concerns that CalFed must find resolution for in the preferred alternative solution.

We trust that your complete and thorough review of this submittal will receive the utmost attention.

Sincerely,

Roger Sherrill

Roger Sherrill, General Manger
Rio Alto Water District

RS/jo

Attachment

September 1, 1999

Mr. Lester Snow
CALFED Bay-Delta Program
1416 Ninth Street, Suite 1155
Sacramento, CA 95814

RE: CALFED BAY-DELTA PROGRAM
Programmatic Environmental Impact Statement/Environmental Impact Report

Dear Mr. Snow:

The Northern Sacramento Valley CALFED Advisory Group reconvened last week to assess how the CALFED Bay-Delta Program (CALFED) draft preferred alternative will impact the Sacramento Valley. Participants at this meeting expressed unease and dissatisfaction with the direction CALFED appears to be heading, especially with the Record of Decision looming less than one year from now. Those of us in the Sacramento Valley are very concerned that select elements of CALFED's proposed program are currently being implemented well in advance of EIS/EIR public input and a Record of Decision and that many of the issues conveyed to CALFED by this group over two years ago still remain unaddressed.

Specifically, what benefits does the CALFED proposed solution bring to the Sacramento Valley? In its current form, there appears to be limited benefits in this plan for Northern California water users. The preferred alternative provides no new water for our region, and advocates that water and land will be removed from agriculture to compensate for Bay-Delta problems that were not caused by our actions. CALFED has advocated that "we all get better together with no redirected impacts". Not only are we not getting better, but our region will bear the brunt of redirected impacts. We feel that the proposed solution emphasizes the interests of the Bay-Delta and the exporters that rely upon it. We are alarmed by several premises interwoven through the draft preferred alternative:

The solution provides no new water to the Sacramento Valley and does not appear to compensate for water already lost due to Central Valley Project Improvement Act (CVPIA) and the Endangered Species Act (ESA).

CALFED must provide assurances that all aspects of water management - including new surface storage as well as groundwater storage - will move forward together with equal emphasis. Assurances can only be achieved through actions that demonstrate that these programs will move forward. We cannot bear the risks associated with holding off on new surface storage until "soft path" measures are satisfied.

Additional specific information on storage and conveyance facilities is needed to fully link background studies to proposed actions. For example, the size and configuration of the proposed Hood diversion and conveyance modification is not disclosed in sufficient detail. On the other hand, the criteria for triggering an open door to expansions and extensions to this facility are overly rigid.

The Environmental Water Account (EWA) requires additional explanation and assurances that: 1) Clear and practical criteria that will hold EWA Agencies accountable for their actions; and 2) program water acquired north of the Delta will impart and benefit local water supply reliability, environmental and economic benefits.

CALFED should develop a "Local Coordination Plan" that clearly shows how all CALFED program elements, particularly those involving groundwater or acquisitions of land and water, will be implemented in concert with input from local interests. CALFED must define the assurances that will ensure that projects initiated within the scope of the preferred alternative will meet criteria established by area-of-origin in protections, local laws and ordinances and local Groundwater Management Plans.

CALFED's restoration efforts must consolidate the myriad of ongoing agency programs into a cohesive plan that focuses on maintaining existing habitat and fully utilizes public lands prior to acquiring new land. CALFED should carefully consider and plan to avoid adverse social, economic, environmental or third party effects to local communities before embarking on a large-scale ecosystem restoration program. When unforseen events occur, CALFED must immediately mitigate such events with locally approved measures.

CALFED should summarize existing regulatory programs, explain associated authority and develop a coordinated plan that shows how conflicts between the Endangered Species Act, Clean Water Act, Central Valley Project Improvement Act and other regulatory mandates will be resolved.

Sacramento Valley water use efficiency will not produce new water to satisfy Bay-Delta needs. We are concerned that the preferred status given to users who somehow comply with efficiency standards may in effect elevate those water rights above "non-compliant" users (see page 124, Revised Phase II Report). Where is the "base line" for conservation efforts drawn? CALFED must absolutely avoid advocating crop control and/or land fallowing as a method of securing program water from the Sacramento Valley.

Our discussion of these concerns, as well as our views expressed over two years ago regarding flood control, new facilities, groundwater and other area-of-origin concerns have been expanded upon in the document that is attached. We urge that you consider these critical issues as you refine a solution to satisfy the environmental and water supply problems of the Bay-Delta. Definite steps are proposed to take care of Delta exporters and environmental concerns in your plan. We need specific assurances of additional surface water supplies and/or supply reliability for the Sacramento Valley. The north state ecosystem and economy can not be sacrificed to improve the Delta and south state water supply.

Our concerns need to be addressed in detail by CALFED. We want substantiated, straight forward answers to our questions and welcome the opportunity to meet with you to discuss these issues face-to-face. If you have any questions or would like to arrange a meeting with our group, please do not hesitate to contact Roger Sherrill, General Manager of the Rio Alto Water District, at 530-347-3835.

Sincerely,

President, CFO
American Property and Land
Education Foundation, Inc.

James G. Lowden
General Manager
CORNING WATER DISTRICT

Jane Dolan, Chair
Butte County Board of Supervisors

Cynthia C. Peterson
Manager
Dunnigan Water District

Mark Lightcap
CALIFORNIA WATER SERVICE CO.
MARK LIGHTCAP

EL CAMINO IRRIGATION DISTRICT

Gary Cole
Gary Cole, Cherokee Watershed Group

M/M. Bud Hagen 9/20
Graham — OK 9/17
Hoppin — OK 9/17
[illegible] OK —
[illegible] OK 9/17

Joann C. Sutton
Family Water Alliance

Ron M. Gunn
Ross Turner, Chairman
Tehama County Board of Supervisors

Glenn County Board of Supervisors

Jenny Bungarz, Chairman, Glenn
County Board of Supervisor

Don Heffren, Manager
R. Gorrill Ranch Enterprises
Gorrill Land Company

Frank W Cook

Frank Cook, Mayor, City of Gridley

David Guy
Executive Director
Northern California Water Association

Peter J. Hughes
General Manager
NATOMAS MUTUAL WATER COMPANY

RECLAMATION DISTRICT 108
Luther P. Hintz GEN. MGR.

Donald R Bransford
Don Bransford
Chairman of the Board
Northern California Water Association

Max Richman
President, Board of Directors
Rio Alto Water District

Rick Massa
Rick Massa, Project Manager
ORLAND UNIT WATER USERS' ASSOCIATION

Roger Sherrill
General Manager
Rio Alto Water District

Glenn Hawes
Glenn Hawes, Chairman
Board of Supervisors
County of Shasta

SUTTER EXTENSION WATER DISTRICT
By Ronald R. Harrington
RONALD HARRINGTON, Chairman

COUNTY OF NEVADA

STATE OF CALIFORNIA

950 Maidu Avenue • Nevada City, California 95959-8617
Telephone: (530) 265-1480 • *FAX: (530) 265-1234*

BOARD OF SUPERVISORS

July 27, 1999

Tib Belza, Chairman
Yuba County Water Agency
Board of Directors

Subject: Yuba County Water Agency Supplemental Flood Control Program - Phase II Report

Dear Mr. Belza:

On behalf of the Nevada County Board of Supervisors, I would like to thank you for inviting comment on the Yuba County Water Agency Supplemental Flood Control Program Phase II Report. Nevada County shares your concerns and is committed to helping you find a viable solution to the serious issue of flood control in Yuba County and other downstream communities.

While we are not at this time submitting technical engineering comments on the report, we do have several overall observations about the study, as well as specific recommendations regarding the Preliminary Alternatives recommended for further review in the Phase II report. Due to the short time limit for submitting comments, we reserve the right to submit additional comments and concerns at a later date.

At our meeting on July 27, 1999, our Board also passed a resolution opposing the construction of dams and multi-purpose reservoirs at Freeman's and Edwards Crossing, and the Lower Narrows. Since each of these proposed facilities would impact private and public property in Nevada County, and in light of previous YCWA statements and protections in the law regarding local approval of dam construction, we respectfully request you remove these alternatives from further consideration in your study.

Overall Comments

The format of the report and the analysis of the alternatives are well done. We appreciate the way that the report has been presented, including a full listing of the alternatives under consideration, and the results of your analysis based on specific criteria. This has helped us to understand more completely your objectives and concerns in evaluating your flood control options.

We are concerned however, that your analysis is based upon certain assumptions that we believe to be unrealistic or inappropriate for evaluating potential flood control options. There are two specific assumptions that YCWA has used in the report we wish to comment on:

a. The level of flood protection sought

b. The economic assumptions used

a. Flood Protection: Much of the report is based upon the need for 500-year flood protection. This is a very high standard - much higher than most areas in California either presently enjoy or are attempting to achieve. Choosing a flood protection level of this high standard makes the possible solutions more expensive, as well as considerably more extensive.

As you are well aware, the Army Corps of Engineers and the State Reclamation Board released a report in April 1998 outlining a series of flood protection alternatives that produce a 300 year level of flood protection for the City of Marysville. A 200-year flood protection level is proposed for rural Yuba County (where I understand a large percentage of the population now live). The money for these improvements is pending in the WRDA bill still moving through Congress. Nevada County has previously endorsed passage of these funds and is willing to assist in this effort in the future.

It is not clear that the YCWA 500-year flood protection goal is justified. We believe the additional expense; timeframe and impacts of the facilities needed to achieve this goal are unrealistic and impractical at this time.

b. Economic Assumptions: YCWA forecasts expense and income over a 30-year period for each alternative. Obviously these numbers are based on a number of assumptions, and are not all-inclusive. They do appear however, to underestimate the cost of building the proposed dams.

It is clear that economic goals underpin much of the improvements examined by YCWA. The study indicates YCWA is interested in maintaining or increasing water storage for sales, and seems to require that any increase in flood reservation at New Bullards Bar be matched by new storage elsewhere.

We strongly object to water storage projects solely for YCWA economic development and investment projects that injure the economic health or private and public property in Nevada County. It is clearly within our jurisdiction to protect the current land uses in the Yuba River canyon that lie within our border, and we will continue to do so with vigor.

Comments on Preliminary Alternatives for Further Review

OUT OF COUNTY PROJECTS: The County of Nevada will not comment officially on projects that do not directly impact our County land uses or economy. However, we wish to generally note that new reservoir and detention water projects on the Yuba River are also not presently supported by state and federal agencies with water project management authority. The short- and long-term impacts of new expansion of on-river canyon dams on fisheries, habitat and the economy appear to have made them a poor choice for further consideration. These include alternatives not directly impacting Nevada County as follows:

A Reservoir Enlargements 7. c. & d.,

B: Reservoir Enlargements 3. c, 7. c.
C: Parks Bar Detention Basin, 8.
D: Reservoir Enlargements 7. b. & c.,
E: Reservoir Enlargements: 7. b. & c.
G: Parks Bar and French Dry Creek Reservoir, 10.

PROJECTS THAT DIRECTLY IMPACT NEVADA COUNTY LAND USES

Alternative A: We fully support 4.c. Increased flood storage space with outlet enlargement at New Bullards Bar Reservoir. We are concerned about the land use and economic impacts of 11. a.: Waldo Reservoir.

Alternative B: We fully support 4.c. Increased flood storage space with outlet enlargement at New Bullards Bar Reservoir. We are concerned about the land use and economic impacts of 11. a.: Waldo Reservoir.

Alternative D: We are opposed to the construction of Freeman's Crossing Reservoir.

The reservoir would have the following negative impacts on the residents of the San Juan Ridge area of Nevada County:

- Loss of homes and land of at least 135 people in Nevada County to submersion and condemnation around the proposed dam area
- Loss of approximately 10% of students attending Twin Ridges School District due to condemnation of homes, placing further strain on an already declining enrollment
- Depreciation of land values in North San Juan
- Loss of a gravel business on Drunken Miners Road
- Loss to local North San Juan businesses from elimination of Oregon Creek campground recreation facilities
- Major socioeconomic disruption caused by dam construction and variable water levels of a flood control reservoir

Alternative E: We are opposed to the construction of a multi-purpose reservoir at Edwards Crossing. This dam would flood an important recreational use area of the river; flood private property under the jurisdiction of the County of Nevada, including the property of dozens of parcels whose owners have asked for protection under the wild and scenic river system. This alternative would also have a long-term impact on the economy and environment of Nevada County. Construction of a dam at this location is inconsistent with the 1995 Nevada County General Plan, Policy 5.21.

Alternative F: We are opposed to the construction of the multi-purpose reservoir at the Lower Narrows. This dam would flood an important recreational use area of the river including the large and successful South Yuba River State Park, and flood private property under the jurisdiction of the County of Nevada, including the property of dozens of parcels whose owners have asked for protection under the wild and scenic river system. This alternative would also inundate the existing reservoir and dam at Englebright; and have a long-term impact on the economy and environment of Nevada County. Construction of a dam at this location is also inconsistent with the 1995 Nevada County General Plan, Policy 5.21.

Alternative H: We fully support this alternative of creating a flood bypass and increasing downstream channel capacity.

Alternative I: We fully support channel capacity enlargements and levee setbacks to increase downstream capacity.

In Summary

We have noted with interest Yuba County's reassurances that they will not seek to build dams or reservoirs in Nevada County without our support. Our General Plan, adopted by a 5 - 0 vote in 1995, requires that we discourage placement of dams on the Yuba River. At this time, we formally request that you cease consideration of the Edwards Crossing Reservoir, the Lower Narrows Reservoir, and the multi-purpose reservoir at Freeman's Crossing and remove them from your study as possible flood control alternatives.

Please feel free to contact me if you have any questions about our comments. We also request that we be placed on your notification list for future public meetings and upcoming YCWA activities related to the evaluation of alternatives in your study.

Thank you for your consideration.

Sincerely,

PETER VAN ZANT
Chairman of the Board

RESOLUTION No. 99193

OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA

RESOLUTION SUPPORTING PROTECTION FOR ENGLEBRIGHT LAKE IN THE CALFED STUDIES REGARDING RESTORATION OF SALMON & STEELHEAD HABITAT IN THE UPPER YUBA RIVER

WHEREAS, reintroduction of steelhead and salmon in the upper Yuba River could bring potential economic and ecological benefits and/or costs to all the residents of Nevada County and the State of California; and

WHEREAS, Englebright Lake is an important component in the Yuba River Watershed providing important recreational opportunities and debris control, and contributing to the overall economic health of Nevada County; and

WHEREAS, studies proposed by CALFED will provide valuable information to help meet CALFED's goal of re-introduction of steelhead and salmon; and

WHEREAS, the discussion around these issues have created tension and fear and affected local stakeholders including private property owners, visitors, businesses and their employees who fear more negative impacts on their property and businesses if the dam is decommissioned.

NOW, THEREFORE, BE IT RESOLVED, that the Nevada County Board of Supervisors seeks protection for our county in the current water policy debate. We call upon CALFED to:

1. Further reduce future harm to our community by quickly completing the proposed studies on whether habitat for salmon and steelhead still exists in the upper reach of the Yuba, ensuring that these studies are comprehensive, credible and objective;

2. If habitat is found to be viable, find a way to restore the salmon and steelhead run and save Englebright Lake;

3. Fully and expediently compensate all property owners and businesses injured by any actions of CALFED.

PASSED AND ADOPTED by the Board of Supervisors of the County of Nevada at a regular meeting of said Board, held on the 27th day of April, 19 99, by the following vote of said Board:

Ayes: Supervisors Peter Van Zant, Karen Knecht, Bruce Conklin, Elizabeth Martin, Sam Dardi
Noes: None.
Absent: None.
Abstain: None.

ATTEST:
CATHY R. THOMPSON
Clerk of the Board
By: Cathy R. Thompson

Chairman

DATE	COPIES SENT TO
4-29-99	CALFED
	County of Yuba
	LWW Assn.
	Penn Valley Chamber
	Yuba County Water Agency
	NID
	SYRCL

David Munro-Skipper's Cove

RESOLUTION No. 99428

OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA

(A RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT OR AGREEMENT)

BE IT HEREBY RESOLVED by the Board of Supervisors, of the County of Nevada, State of California, that the Chairman of the Board of Supervisors be and is hereby authorized to execute, on behalf of the County of Nevada, that certain MEMORANDUM OF UNDERSTANDING dated the 7TH day of SEPTEMBER, 1999, and between said County and YUBA WATERSHED COUNCIL pertaining to A VOLUNTARY AGREEMENT TO COOPERATE AND COORDINATE YUBA WATERSHED LAND MANAGEMENT AND PLANNING ACTIVITIES.

PASSED AND ADOPTED by the Board of Supervisors of the County of Nevada at a regular meeting of said Board, held on the 7th day of September, 19 99, by the following vote of said Board:

Ayes: Supervisors Van Zant, Conklin, Dardick.

Noes: Knecht.

Absent: Martin.

Abstain: None.

ATTEST:

CATHY R. THOMPSON
Clerk of the Board of Supervisors

By: Cathy R. Thompson

Chairman

DATE	COPIES SENT TO
9-8-99	Yuba Watershed Council c/o R. Zinke
	A-C
	Planning

MEMORANDUM OF UNDERSTANDING
for the
YUBA WATERSHED COUNCIL

I. PURPOSE AND NEED

The signatories of this Memorandum of Understanding (MOU) recognize the value of coordinating land management and planning activities among public agencies at all levels as well as between these agencies and other stakeholders, and to evaluate and implement projects of mutual interest. This MOU is intended to foster overall watershed health through cooperation, information and education including but not limited to the planning and implementation of specific actions involving water quality and quantity, air quality, recreation, fisheries, wildlife, riparian/terrestrial habitat, public safety, flood control and fuels management.

II. VISION STATEMENT

We envision our watershed as a biologically diverse, productive and sustainable watershed containing:

- Rivers, streams and lakes that flow clear and clean, are free from pollution, and support healthy aquatic and riparian ecosystems;
- A landscape that reflects a diversity of terrestrial ecosystems and provides habitat to support healthy fish, wildlife and plant communities;
- A viable socioeconomic environment.

III. MISSION STATEMENT

The Yuba Watershed Council is a community forum of stakeholders which is taking the initiative to:

- Better appreciate the complex watershed relationships in the Yuba River watershed and its environs;
- Protect, restore and enhance watershed resources where needed;
- Maintain a sustainable watershed resource base for future generations.

In addressing social, economic and environmental concerns in the watershed, Council members will cooperate and coordinate with one another, while respecting the mission, roles and rights of each entity.

Functions:

- Assess potential issues of importance in the watershed and bring to the group for consideration;
- Help coordinate efforts or activities of individual members and interests involved in the watershed and/or partner with individual organizations on specific watershed-related projects;
- Represent and provide balance of diverse interests in reviewing and prioritizing proposed watershed projects or issues of concern;
- Identify and coordinate joint applications for public and private funding for research, planning and implementation, and long-term monitoring programs supported by the Council;
- Provide oversight and resources, as necessary and appropriate, for the administration of grants received and projects undertaken in the name of the Council;
- Serve as an educational resource and central informational clearinghouse and networking hub for individuals and groups with projects and interests in the watershed or those with general concerns about watershed issues;
- Help break down barriers and enhance relationships between agencies, and between agencies, stakeholders, and the rest of the community.

IV. DESCRIPTION OF COUNCIL AREA OF INTEREST

The Yuba Watershed Council's area of interest consists of the Yuba and Bear River watersheds, from their headwaters to their confluence with the Feather River.

V. DESIRED PARTICIPANTS

Stakeholder participation is strongly encouraged to enable and ensure that the Council's activities fully reflect the vision and mission of the Yuba Watershed Council. The Council will include participants from the following categories:

Federal and State Agencies
Local Government Agencies
Businesses and Commercial Interests
Community Interest Groups/Individuals

(See Appendix A for a listing of desired participants)

VI. GENERAL TERMS AND CONDITIONS

1. The Council uses a collaborative and consensus-based process. When consensus is not possible, a two-thirds majority vote will be used to make decisions, as described in the bylaws. A dissenting minority opinion will be recorded in the minutes.
2. This Memorandum of Understanding is a dynamic document subject to change by consensus.
3. The intention of this Memorandum of Understanding is to establish a voluntary and cooperative commitment by the signatories to work together in a watershed planning process and in the implementation of projects to the extent of their authority. The Yuba Watershed Council, by design, includes members who represent a broad diversity of interests and viewpoints. Council members may have strong opinions on particular issues that differ from those of other members. Council members respect the viewpoints of others, and expect that their viewpoints will be respectfully heard and considered. Council members listen first to gain understanding of what is being said, before judging or expressing disagreement. Council members understand that they are responsible for maintaining an atmosphere where ideas and positions can be freely discussed. Council members refrain from making personal attacks on others, avoid hidden agendas, and conduct themselves in a way that fosters consensus building.
4. This Memorandum of Understanding is not a contract and is not legally binding; it is instead an agreement among the signatories to work together toward common goals to the extent possible. No signatory may be forced to take any action with which it does not concur.
5. Any signatory party, in writing, may request termination of their participation at any time.
6. This Memorandum of Understanding is effective as of September 15, 1999.
7. It is the intent of the signatory parties to maintain this MOU indefinitely.

VII. SIGNATORIES

We the undersigned, concur with the vision, mission and governance structure of the Yuba Watershed Council, and will act to implement this Memorandum of Understanding to the best of our ability.

Name	Title	Representing
Peter Van Zant	Chairman, Board of Supervisors	Nevada County

Invited to Join

USGS
High Sierra Resource Conservation and Development
CDFG
USFWS
ACOE
DWR
Department of Conservation
Regional Water Quality Control Board
CCC
CYA
Northern Air Quality Management District
Town of Washington
Nevada County Fish and Wildlife Commission
Yuba County Water Agency
Sierra County
Placer County
Yuba County
Placer County Resource Conservation District
All fire districts as outlined on Desired Participants
All Chambers as outlined on Desired Participants
Hansen Bros
Sierra Pacific
Menasha Corp.
Economic Resource Council
Robinson Timber
Skippers Cove Marina
CABPRO
California Landowners Alliance
Nevada City Anglers
Gold County Flyfishers
CA Sport Fishing Alliance
CAL Trout
Nevada County Fire Safe Council
CA Indian Basketweavers Association
Nevada County Land Trust
Nevada County Conservation Alliance
Cement Hill Neighborhood Association
Cattleman's Association
Farm Bureau
CA Native Plant Society

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SMUD

SACRAMENTO MUNICIPAL UTILITY DISTRICT | P. O. Box 15830, Sacramento CA 95852-1830, (916) 452-3211
AN ELECTRIC SYSTEM SERVING THE HEART OF CALIFORNIA

September 23, 1999
F&C 99-152

Mr. Lester Snow
CALFED Bay-Delta Program
1416 Ninth Street, Suite 1155
Sacramento, CA 95814

Subject: **CALFED Bay-Delta Program Draft Programmatic Environmental Impact Statement / Environmental Impact Report June 1999**

Dear Mr. Snow:

The Sacramento Municipal Utility District (SMUD) is the largest Central Valley Project (CVP) Preference Power Customer, providing not only payments into the Restoration Fund, but repayment of the CVP plant-in-service and Operations and Maintenance costs allocated to power. We have a major financial interest in the prudent management of CVP facilities. SMUD has significant concerns regarding the policies and programs under development by CALFED to modify the operations, management and physical facilities of the CVP. To this end, SMUD submits the following comments on the CALFED Draft Programmatic Environmental Impact Statement/ Environmental Impact Report, June 1999 (PEIS/EIR).

The revised draft PEIS/EIR adequately reflects some comments made previously by SMUD. It does not, however, go into the detail requested in our previous letter. We reiterate that the CALFED proposal will impact CVP power generation. The impacts upon CVP Preference Customers will be long term, significant, and impair the operations of the Western Area Power Administration (Western).

The issues that concern SMUD are discussed below:

Impacts to CVP Power Resources

* **The amount of CVP hydroelectric energy available for sale will decrease substantially in nearly all CALFED scenarios.** The greatest impacts to CVP operation and power sales involve those scenarios that include water storage facilities and/or the isolated conveyance facility. Proposed storage facilities and associated pumping costs are "generic" in nature. No information is provided regarding the storage and pumping load assumptions. The explanation is not adequate to make a valid impact evaluation. *Please elaborate in detail in the Final PEIS/EIR.*

* **The PEIS/EIR assigns impacts either entirely to the CVP or entirely to the State Water Project (SWP), while the impact analysis for Preference Power Customers is largely ignored.** We concur that these scenarios are the extreme ends of the spectrum and will never occur. However, SMUD objects to such severe adverse impacts to CVP

power production being evaluated in this document. *Please remove these extreme scenarios in the Final PEIS/EIR because they are unreasonable, infeasible, and avoid proper discussion of real-world possibilities.*

To understand the impacts to the capacity, generation, pumping energy and energy available for sale that will result upon implementation of CALFED, a variety of potential project allocations showing some real-world options are appropriate and necessary. This approach, however, was not taken. The document states that program alternatives will be discussed in subsequent environmental documentation. In its previous comments, SMUD suggested that a range of scenarios should be developed to show the power production impacts of each alternative from implementation of CALFED programs. Any scenario, even a "50-50 CVP-SWP" operation scenario, would be preferable to having no scenario to review.

* The **average annual energy impact** (a reduction of 1,235 GWh **for the preferred alternative** translates to **a reduction of *one-third*** of the energy available under existing conditions (3,695 GWh). In **Alternative 3** (including the peripheral canal), the **worst case reduction in energy is 1,671 GWh, *almost half* of the marketable resource** shown under existing conditions.

* **The information provided regarding the impacts associated with new storage and conveyance facilities is inadequate**. The primary impacts to power result from increased pumping energy consumed at proposed new water storage and conveyance facilities. The reader is not told where these facilities are to be located, their potential costs, their primary beneficiaries, or how the cost of such facilities will be recovered. The document lacks any meaningful appraisal or feasibility analysis of the costs and benefits of such new projects.

New pumping and storage facilities would have huge adverse impacts to power sales to Preference Power Customers and would, therefore, threaten the repayment capability of the CVP. A large part of the CVP repayment to the U.S. Treasury of the cost of construction of the CVP comes from Preference Power sales. New legislation and appropriations will be required to integrate CALFED into the CVP. The real question is whether inclusion of such features in an environmental document is appropriate prior to securing Congressional authorization.

* **Other related comments:** Section 7.9.2, Areas of Controversy adequately summarizes the impacts of CALFED upon the CVP and SWP. However, it does not adequately address the severity of impacts to CVP Preference Power Customers, nor does it begin to address the long-term financial implications of the wholesale modification of CVP operations and the impacts to all CVP customers. It is stated: "The Program has no specific objectives for hydropower generation. However, the Program does seek to minimize negative effects on resources, such as hydropower generation, during and after implementation." We do not see this reflected in the text of the PEIS/EIR.

In Section 7.9.4, page 7.9-7, states "power plants, which may be modified, were identified..." Please identify which power plants were included in your assumptions.

Operational changes to CVP

Implementation of CALFED will require reoperation of the CVP. Reoperation will affect the timing of energy generation, peak project capabilities, annual energy production, and the distribution of energy on a seasonal, monthly, and daily basis.

* **The water model utilized is inadequate to analyze power production impacts.** An integral part of the CALFED process is the development of accurate information to determine impacts. Since DWRSIM is based upon monthly averages, it cannot forecast energy output and power values. As stated in our previous comments, the water modeling does not provide the data needed for an adequate power production analysis. The scope of operational changes resulting from CALFED is unclear. Not enough information is presented to determine what changes in revenues from power sales and power costs to CVP Power Customers like SMUD would result from the implementation of any of the CALFED alternatives.

In order to develop an adequate power production model, the following items need to be addressed for each alternative:

- Determine the timing of water releases from power production reservoirs,
- Determine the quantities of water to be released,
- Conduct an evaluation of how these flows will impact potential generation,
- Determine how the CVP power production will be affected and total amounts of power that will be available for sale for preference power customers, and
- Determine the impacts of energy consumed by storage and conveyance facilities and the percentage of such consumption that would be supplied from CVP generation.

* **More detail is needed regarding the specific operational changes under consideration.** Page 7.9-22 states: "A wide range of CVP and SWP operational changes currently are being assessed during the Program's study." Please provide the details of what operational changes to what streams are being studied. As stated in "Effects at Other Hydroelectric Facilities: "the Preferred Program Alternative would change flows instream below CVP and SWP facilities." This is a minor statement with far reaching implications. SMUD again requests the valid scientific reasoning behind the amount and timing of water releases proposed in the CALFED operation scenarios. These are examples of the serious impacts to hydro systems merely mentioned in the text of the document, which are not accompanied with any supporting analysis. The Draft PEIS/EIR is inadequate and flawed unless and until these deficiencies are resolved.

Impacts upon CVP Rates

* **The rate analysis is understated; increased rates could render Western power unmarketable.** A hypothetical rate analysis was conducted in the PEIS/EIR. The impacts on rates are shown as hypothetical increases that could raise Western's composite rate above the market price for power. The market price is estimated at $34/MWh in the year 2020 (1998 dollars). This has numerous implications to the future of the CVP and Western, only some of which are mentioned in the document. Rate increases will occur due to changed river operations, increased pumping loads and increased mitigation costs assigned to CVP Preference Power Customers. The initial result, as stated in the document, would be to drive customers away. If Western's rates are pushed above what the existing energy market is, customers will buy elsewhere resulting in an inability to repay CVP capital. This is a serious impact and is not addressed in the PEIS/EIR. Additionally, increasing rates will decrease the power customer's ability to compete in the restructured utility industry competitive environment. It is in the best interest of all parties to assure that Western remains viable and continues to market federally generated power. The PEIS/EIR continues to avoid the discussion of the impacts of these serious rate increases upon the Preference Power Customers.

Assumptions are made that replacement power will be purchased from the open market. These are untested assumptions. There is little clarification of where this power will come from, how it will be generated, and where additional generation will be built. These matters should be thoroughly addressed in the Final PEIS/EIR.

CALFED does not recognize that rate impacts, being economic in nature, require mitigation. The CALFED philosophy states there will be no "redirected impacts" and "the beneficiary pays." For the CVP Preference Power Customers, this will require a commitment to mitigate directly for rate impacts. CALFED must commit to this mitigation to the CVP Stakeholder group.

CALFED policy requires that beneficiaries of CALFED Program actions will have to reimburse for lost power or pay to construct replacement generation. We concur with the philosophy of this approach and would like to see CALFED adopt this as a policy for generation losses in the Final PEIS/EIR.

CALFED Financing / Program Cost Allocations

* **It is not possible to determine the full impact of the alternatives because project funding is not addressed.** As a Preference Power Customer of the CVP, SMUD has been paying its equitable share of Central Valley Project Improvement Act (CVPIA) Restoration Fund costs. The CVPIA is a separate program with specific objectives and prearranged payment obligations established by Congress. The Restoration Fund is financed partially by the CVP Preference Power Customers and is intended for the mitigation of CVP and its impacts. Use of the Restoration Fund by other entities for non-CVP purposes is not allowed.

The CALFED program should not anticipate that CVPIA money will be redirected to CALFED or that CVP Preference Power Customers are able to pay beyond current Restoration Fund costs. Allocating additional Program costs to CVP Preference Power Customers would exacerbate anticipated rate impacts, and make it more difficult for CVP Preference Customers to repay the Treasury.

Future funding of CALFED is not discussed in detail, nor are impacts of policy implementation. Follow-up documentation should discuss the role of Proposition 204 and other funding resources.

A final finance plan for CALFED is scheduled for completion at the time of the Record of Decision in June 2000. Since all funding sources are not identified, impacts in regard to the financing of CALFED cannot be properly addressed. The Final PEIS/EIR should be revised to include sufficient funding detail to enable stakeholders like SMUD to determine how we are impacted.

CALFED Program Governance

* **A representative from Western should be added to the governance board.** The governance and decision-making structure proposed to implement CALFED actions is designed to assure CALFED programs will be successful. SMUD proposes that Western be granted a seat on the governance board. The PEIS/EIR states: "The Program is coordinating with Western to ensure that issues are identified and properly framed, so that consequences and options are clear to stakeholders, the public, and Program decision-makers." As a member of the governance board, Western would have important input to decisions affecting hydropower generation, Program cost, equity and impacts on CVP operations. Since CALFED has not taken the initiative to analyze program impacts, Western would be the go-between to address impacts to its customers in a more forthright manner.

Cumulative Impacts

* **The treatment of power production impacts is vague and unsupported.** Cumulative impacts are described in Chapter 3 in a very vague manner. In Table 3-1, Power Production and Energy section, states: "Other Program elements may affect power production and energy, but would not significantly affect CVP or SWP hydroelectric generation capacity, power production economics or energy generation." This is an unsupported statement with no reference to the text in the document. This needs to be elaborated and clarified in detail in the Final EIS/EIR with references and examples of how other Program elements will affect power generation and how they will be mitigated.

In Table 7.9-1, except as part of the No Action Alternative, no attempt is made to quantify power impacts from all projects that could affect power. In Table 7.9-1, the differences in power generation between existing conditions and the No Action Alternative do not appear to accurately portray the impacts of the actions listed in Section 2.2 and Attachment A, including CVPIA flows and anticipated Trinity River flow

increases due to the Flow Study. The numbers in Table 7.9-1, appear to understate the difference between existing conditions and No Action (i.e., the change is likely to be larger than predicted in this PEIS/EIR). This needs to be revised in the Final EIS/EIR or the document will be flawed.

* **No attention is paid to future operation of the Trinity River Unit.** The PEIS/EIR omits a detailed discussion of impacts to the CVP concerning the future operation of the Trinity River Diversion and how the reoperation of the Trinity River Unit will impact the proposed CALFED alternatives. The CALFED analysis assumes that 340,000 AF per year will meet all Trinity River instream flow needs. However, the upcoming Trinity River Restoration EIS will most likely assume a higher amount of flow to be returned back into the Trinity River. This assumption is not addressed in the PEIS/EIR and will have major implications to all parties. The latest model runs from CVPIA were not available for inclusion into the PEIS/EIR, but they are available for inclusion in the Final PEIS/EIR. Please revise the document to reflect potential future Trinity River operation scenarios.

In Table 7.9.4, Summary of Power production and Energy impacts of Related Actions, reference is made to projects on the American River, which may affect "available capacity and generation at the Nimbus and Folsom power plants on the American River ....". Is this program proposing projects in the American River? If so, discussions with existing hydropower operators in the American River basin, including SMUD, should commence immediately. *Please respond in detail to SMUD in a separate letter regarding what river basins are under consideration for future new or expanded water storage facilities.*

Mitigation Strategies

* **Mitigation measures to reduce adverse impacts to power generation are not included.** The PEIS/EIR states the CALFED Program has no specific objectives for hydropower generation. However, the Program does seek to minimize impacts on hydropower generation, during and after CALFED implementation. The Program also seeks to minimize redirected impacts and to maintain linkage between the beneficiaries of actions and the costs of those actions.

Given this direction, mitigation measures to reduce adverse impacts to power generation should be part of the text of the document. Within the constraints of other power project purposes, the timing of water releases, CVP reservoir storage and afterbay operation should continue to be used to optimize the amount and timing of CVP hydropower generation so as to provide optimal power benefits where possible.

SMUD supports mitigation that will positively influence the ability of Western to continue to sell power at reasonable rates to the CVP Preference Power customers.

Increases in CVP energy use costs should be covered by revenue from CVP water users, natural resource agencies, and other environmental beneficiaries. Additional pumping costs should be assigned to the beneficiaries of the pumping.

Other Issues

* **CALFED should develop a detailed cost estimate and a cost-benefit analysis of each alternative.** The cost of each alternative will be a major factor in determining CALFED's actions. However, a more important factor should be the ability of the preferred alternative to meet the program objectives. Costs should be distributed equitably among the beneficiaries in proportion to the benefits received. Improvement to the environment benefits the general public and should be funded by the general public.

By increasing water supplies to meet downstream water obligations, timing and duration of power generation will be affected. While it is possible to generate replacement power utilizing environmentally clean sources, higher production costs would occur. Again such costs should not be born by CVP Preference Power Customers but those beneficiaries of CALFED actions.

Conclusion

Despite the volumes of CALFED documents, there is a disturbing lack of detail on key issues. CALFED does not adequately evaluate impacts to power. SMUD's input and requests made in regard to the earlier Draft EIS/EIR were ignored. If the scenarios presented in this document come to fruition, serious impacts will be imposed upon the CVP Preference Power Customers and Western. It does not appear that any more detail will be made available to the CVP Preference Power Customers to evaluate impacts to the CVP and to adequately plan for replacement power in the future. Very sparse information is presented to respond generally to CALFED's comprehensive plan or specifically to the Draft PEIS/EIR.

SMUD concurs with the philosophy that CALFED solution principles must: reduce conflicts in the system, be equitable to all, be affordable, be long lasting, be implementable, and have no significant redirected impacts. Any new CALFED use of the CVP should be paid for by new generation or by the beneficiaries of the facilities at the current market rates and not by depleting existing CVP resources.

CALFED's Final EIS/EIR should demonstrate responsiveness to the stakeholder comments by including the type of revisions requested herein so that it will become a legally sufficient document. The concerns of CVP Preference Power Customers need to be addressed. To ensure this occurs, meeting between this customer group and CALFED is hereby requested to initiate some honest discussion; this dialogue should continue throughout the entire life of CALFED.

We look forward to continuing our efforts with CALFED to develop reasonable as well as equitable administrative solutions. If you have any comments or questions, please contact me at 916/732-5716.

Sincerely,

Paul Olmstead

Paul Olmstead
Water and power Resources Specialist

cc:

Nannette Engelbrite, WAPA
Barry Mortimeyer, RW Beck
Hari Modi, NCPA
Lowell Waltross, City of Redding
Tom Campbell, City of Palo Alto

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ORLAND UNIT WATER USERS' ASSOCIATION
Telephone (530) [illegible] 828 Eighth Street
ORLAND, CALIFORNIA 95963

September 20, 1999

CALFED
Bay Delta Program
1416 Ninth Street, Suite 1155
Sacramento, CA 95814

Re: Comments of Orland Unit Water Users' Association to the June 1999 CALFED Bay-Delta Second Draft Programmatic EIS/EIR (hereinafter "EIS/EIR")

Dear Administrators:

The Orland Unit Water Users' Association (hereinafter "OUWUA") is a non-profit California Corporation with over 1,300 shareholders located in Orland, in Northern Glenn County. As a successor to Bureau of Reclamation since 1954, OUWUA operates and maintains the Orland Project, one of the oldest Federal Reclamation Projects in the country, and one of the first undertaken in California. It was authorized by the Secretary of the Interior in 1907 with farm deliveries commencing in 1910. The project comprises water storage facilities at three reservoirs, storage of over 100,000 acre-feet and a distribution system servicing approximately 20,000 acres of irrigable agricultural land.

Stony Creek and its tributaries provide the source of water for the Orland Project. The Upper Stony Creek Watershed, above Black Butte Dam, encompasses a watershed area draining over 735 square miles.

Our comments are contained herein.

COMMENTS TO SPECIFIC PRINCIPLES

A. Beneficiary Pay Principle The 1999 Revised Phase II Report (142-148) sets forth the "beneficiary pays principle". This concept is fraught with problems and is contradictory with the "expanded solution scope" as discussed in the Executive Summary.

1. The North State is relatively lightly populated with a primary agricultural economic base. Imposing a Bay-Delta rehabilitation cost on the people of this area, on

the theoretical grounds that these people have caused the degradation, is not going to work in light of the huge cost of the Proposed Program.

2. Imposing a Program benefit cost on identified users is equally impractical and unachievable. Imposing costs related to flood control merely on the people directly affected, rather than upon the entire State citizenry, will render the financial costs related thereto impossible to be compensated. Requiring agricultural water users to pay and compete with urban users can only result in the elimination of agriculture in the North State because urban users' water rates will not permit agricultural users to profitably farm their land. The argument that those who have "caused" the Delta problems should bare the entire cost of improvements would, in itself, destroy the entire economy of the North State. Under the same analysis, only those benefited by levee enhancement should bear the cost of that aspect of the program. One has to question how one allocates the cost of positive environmental enhancement. Who is the designated party whom benefits therefrom? Are there several parties, and in what ratio of benefit do they share so that costs can be allocated?

3. With respect to offstream storage, numerous issues arise, particularly when considering conjunctive use. Under present California law, the surface landowner is entitled to the ground water underlying the owner's property, so long as the water is not in an underground stream or river. Once conjunctive use is instituted, the initial ground water moved out, replaced with water imbued with a higher degree of Public Trust implications (i.e., Sacramento River water), it will be difficult for the surface owner to establish the nature of continuing rights in the new ground water. This issue must be clearly addressed because of its profound impact on every property owner in the North State. Who would pay for the loss of that right under the beneficiary pays principle?

4. For water districts in the position of OUWUA, offstream storage water might be substituted for present water rights such as pre-1914 adjudicated water rights. If such substitution occurred, pre-1914 rights to specified annual yield and to priority of water use would be at risk. This risk is not merely theoretical. A highly placed official of the Water Resources Control Board (a lead CALFED agency), subsequent to release of this EIR/EIS, stated that "all water rights were on the table, including pre-1914 and even Pueblo rights". The legally determined and vested rights of water districts similarly situated to OUWUA must be protected in the program. Moreover, if water were substituted from a new offstream storage facility, the beneficiary pay principle would suggest that the water district pay at either the urban user price or at the cost of construction price, which would again force that entire agriculture community out of business.

5. In short, the beneficiary pay principle, is misleading, too broad, defective in application, and fails to meet the minimum requirement of an EIR/EIS in that the extent, scope and depth of the impacts are addressed nowhere, either by program or by definition. In addition, the "beneficiary pays principle" flies in the face of numerous other statements in the EIS/EIR, which provide for local control of water sheds and water management. The "local control" principle and the "no redirected impacts" principle will be sacrificed to the overriding "beneficiary pay principle" unless these matters are clearly, completely and comprehensively addressed. At a minimum, a conflict between these principles needs to be thoroughly addressed.

B. Local Control Versus State Comprehensive Control. Section 7.2 of Draft Programmatic EIS/EIR, page 7.2-13, provides for "locally cost effective " standards. The Water Use Efficiency Program Plan contains a "no injury rule." In the "Solution Principles" contained in the CALFED Mission Statement there are to be "no significant redirected impacts, in the entirety of the program, within the Bay-Delta" or " in other regions of California". The Watershed Program Plan mandates that it be "socially and politically in concert with local needs and desires", including development of local capacity for improved watershed management in diverse areas.

However, profound conflicts exist when one looks realistically at the program and other principles.

It is unclear how programs such as Environmental Water Accounts (EWA), a Permit system for the transfer of water, or funding of this expensive project can be implemented any way other than on a regional or statewide basis. The "adaptive management plan" itself is susceptible only of regional or statewide control. The overall Program is pervasive, comprehensive and control-oriented. With respect to the Revised Phase II Report, the following should be noted:

1. At page 1-6 the Ecosystem Quality Element in the Draft Programmatic EIS/EIR can easily lead to a taking of existing water rights or a change in the prioritization in the use of water;

2. At page 1-7 the goal is to "improve export water supplies to meet beneficial use needs, and to improve adequacy of water to meet Delta outflow needs, and to provide predictability of water supply. None of these goals can be achieved within the concept of local control.

3. The potential high dollar cost of construction, implementation and maintenance cannot be carried by the local, basically agriculture, economies.

4. The measurable objectives to insure water management can only be implement from State level downward to local units.

5. The concept of conjunctive use itself contemplates statewide control without any meaningful local participation.

6. Page 3-4, contains the following language: " long-term productivity outweighs short-term impacts". This theme is further defined to contemplate changes in land use, changes in application of agricultural resources, and changes in cultural resources. Simply put, this means that profound dislocation of local economies and water use is inconsequential in terms of the true goals of the program.

7. Both the Water Use Efficiency and Water Transfer Programs reference "more efficient allocation of existing supplies" with a "potential beneficial redistribution of water resources". This can only mean submission of local interest to a statewide control system.

8. Commencing at page 5.1-1 the significant criteria for "primary water supply reliability" is set forth, including increased access to economically efficient water supplies for all beneficial uses, and increase in operational flexibility, as well as improvement in water quality. Again, only a comprehensive, pervasive statewide system can achieve these goals.

C. The Eight Integrated Program Elements. The eight integrated and identified program elements are as follows:

1. Ecosystem Restoration;
2. Levee System Integrity;
3. Water Quality;
4. Water Transfers;
5. Water Use Efficiency;
6. Water Shed;
7. Storage;
8. Delta Conveyance

One is hard pressed to see the benefits accruing to the North State under this program. Rather, the elements provide for a taking and/or reallocation/redistribution of water use for the benefit of others outside of North State, all with burdens to the North State and without positive offsetting benefits.

The Ecosystem in the North State is far superior to anything existing elsewhere in the State. Is this ecosystem to be sacrificed for the sake of the Delta? The agricultural basis of the North State economy provides irreplaceable facilities to the entire ecosystem, as that system presently exists.

The agricultural nature of the North State limits the increase storm flows occurring in developed areas, thereby minimizing flooding risks and helping to protect the levee system down stream.

Water quality in the North State, particularly in ground water, is presently the best in the State.

Water transfers, without compensation to North State parties, and with the regulatory and cost burdens related to transfers, are not of any benefit to the North State.

The DWR recognized that the North State has an amazingly high water use efficiency. Any enhanced benefits in this program would be minimal.

The watersheds are positively and profitably used at the present time.

Storage would merely substitute water with questionable water rights and priority for what are clear and present rights.

The Delta conveyance is clearly for the benefit of Central and Southern California and is immaterial to the North State,

So it can easily be seen that this is a program rife with burdens to the North State with no clear benefits as the Program is promulgated. These issues must be clearly and fully addressed prior to the Record of Decision (ROD) being published.

D. Adaptive Management and Governance. This entire area is inadequately addressed, fails to raise fundamental issues, and certainly does not provide any meaningful answers.

1. The standards for adaptive management are not set forth.
2. The objective determiner for application of those standards is not identified.
3. Accountability to establish and meet the standards is not addressed.
4. The rules and regulation to determine accountability are not set forth.
5. The effectiveness and durability of the agreement will be determined by establishment of objective standards, review by an impartial entity with the power to impose meaningful penalties to secure compliance with standards. None of these concepts are addressed anywhere in the document.

6. The various State and Federal governmental agencies involved in the CALFED process have separate and independent jurisdictions with legislatively imposed duties which cannot be abdicated without further enabling legislation. The "bricks and mortar" construction elements should not be commenced until the fundamental governance structure is in place and operative.

7. A glaring and critical defect results from the fact that oversight functions and implementation functions rest in the same group. It appears that the source of any appeal would be to the initial decision-maker. No matter who is handling the appeal, there does not appear to be standards upon which the appeal determiner can base a decision. In addition, the situation suggests that a small control group would become the pre-dominant and dominating interest in the entire CALFED program.

8. A question exists as to which persons or entities would evaluate the process of interim management. Again, there does not appear to be any independent process by which interim management would be evaluated. This failure of meaningful evaluation could itself result in the pre-dominant and dominating interest controlling the entire process

9. Although the guiding principle of "adaptive management" is clearly set forth, the "nuts and bolts" of such adaptive management are entirely missing. How is adaptive management to take place? Who would be in charge of the adaptive management process? What standards are to be applied in the adaptive management process?

E. The Public is Accepting Assumptions Sub Silencio. The EIS/EIR is further defective in that it merely identifies broad programmatic actions. However, if the broad programmatic model is approved, in reality the public is approving the assumptions that underlie the model. Since those assumptions are not set forth in the EIS/EIR, the public is being asked to approve a model which will govern water use and distribution throughout the entire State for 20 or more years, based upon the mere broad programmatic statements. This is misleading. This is wrong. This fails to meet the legal requirements for EIS/EIR.

F. Procedural and Due Process Defects Exist. The period of time within which the public must review the EIS/EIR (with appendices) is needlessly constrictive in terms of the time necessary to review, digest, and make meaningful comments. This short "window of review" is particularly unsettling and defective in light of the fact that all review of public comments to the prior EIS/EIR (December 1998) is nowhere near completion. Innumerable citizens and groups, with definite but varying points of view, have been unable to secure the EIS/EIR documents at all. They cannot even begin a review. In fact, people who are members of committee, such as the Watershed Management Committee of BDAC, have not been receiving these documents on a timely basis so that meaningful review and comment can be undertaken.

Lack of meaningful review by the public should itself subject these documents to legal challenge. The only means to cure this problem is to provide an extension of time for public comment.

G. The Documents are Subject to Substantive Challenge The purpose of an EIS/EIR is, among other things, to not only set forth the program goals and criteria (as these

documents apply set forth), but also and more importantly to set forth the impacts of the various programs, identify alternatives, and to mobilize the means to avoid or mitigate those negative impacts.

Except in the most general and conclusionary language, the impacts are not identified. and the means of avoidance or mitigation do not appear.

It appears that the EIS/EIR documents are couched in broad, general language in an attempt to:

1. Avoid meaningful and substantive statements while appearing to address issues;
2. Pass minimum judicial review;
3. Provide "pablum" statements to encourage a mass acceptance;
4. Avoid statement and discussion of assumptions underlying the generalized program.

This will not pass judicial muster.

PRIORITIZATION OF PROGRAM ELEMENTS IS NOT ADDRESSED IN A MEANINGFUL MANNER

At page 2-14 of the Draft Programmatic EIS/EIR, the language provides that storage would be developed and constructed. Each of the four program alternatives includes assessment of storage up to 6 million-acre feet of water [page 2-1].

Other programs such as Water Use Efficiency and Water Transfer [pages 2-10 and 1-12, respectively] are intended to provide more efficient allocation of existing supplies, including redistribution of water resources. Such redistribution of water resources would include " the short term adverse impacts" of changes in land use, changes in agricultural resources, changes in cultural resources [page 3-4]. Again, at page 3-15, conversion of farmland will result in adverse economic effects, including job losses and reductions in the water supply [pages 3-15, 3-16].

Consequently, it is essential that offstream storage facilities be built to provide a "safety net", a reserve source of water to address the continuing and growing needs of citizens in the North State. This capacity would tend to offset an overdraft of Sacramento River basin ground water, as well as other water transfers through the Delta to central and southern California. Only in this venue can the adverse impacts identified above, and others, be avoided or mitigated.

Moreover, there is a clear risk, based upon an analysis of funding of the CALFED Program and other statements in the EIS/EIR, that offstream storage will never be built if a through-Delta conveyance is constructed first. The argument would then exist that building of offstream facilities would cause other citizens and entities to avoid the conservation measures necessary to complete the CALFED scheme.

This is a critical issue for OUWUA, and similarly situated entities and individuals.

THE PROBABLE NEGATIVE IMPACTS ON THE OUWUA SHOULD BE IDENTIFIED AND SOLUTIONS PROPOSED TO AVOID OR MITIGATE THOSE IMPACTS

The OUWUA has exposure to risks unique and extraordinary when compared to any other potential impacts in the entire CALFED Program. Those probable or possible impacts include:

1. Loss of, or reallocation of, pre-1914 water rights. Those water rights can be impacted in any number of ways, including the diversion of Stony Creek Watershed flows via tunnel projects from East Park and Stony Gorge Reservoirs (both are Orland Project facilities) to supply the proposed Sites Reservoir; diversion of Stony Creek water high in the water shed to recharge Sacramento river basin ground water; loss of yield or priority to water through a conjunctive use program; loss of yield or priority through substitution of supply from its present source in the Stony Creek water shed to an offstream storage facility.

Presently, OUWUA has a first priority to both captured water and to natural flows on Stony Creek. The entire capacity of the system is used in its full complement on a year-to-year basis. This right must remain inviolate. OUWUA must be made whole in the event of any shift in use or priority.

CALFED must take account of the benefits to the watershed resulting from existence of OUWUA and its use of water. As stated in *" Lower Stony Creek Fish, Wildlife, and Water Use Management Plan, Working Draft No. 2,"* dated January 31, 1996, prepared by U.S. Department of Interior, p. 2-17,

> *"... if one considers the 500-square mile Stony Creek Fan area from north and west of Black Butte Reservoir, east to the Sacramento River and south to about Willows, Stony Creek is estimated to account for about 16 percent of aquifer recharge. Sixty five percent is estimated to come from the deep percolation of applied water and 19 percent is estimated to come from rainfall infiltration."*

Additionally, tail water presently flows down to other water districts in the Sacramento Valley for subsequent use. A substantial amount of its water percolates into the ground and recharges the ground water system of the Sacramento River ground water basin. Benefits then accrue to places such as the town of Orland, which consequently makes less demand on finite Sacramento River water resources. The mandated agricultural use within the OUWUA slows runoff; lessening the threat of floods and protecting levees in the Delta. What other water resources exist to grow and maintain the habitat for the entire ecological system?

A taking or reallocation of OUWUA water rights not only would have a negative impact in all these areas, but would also lead directly to a disruption of life in the economic and social community, which in turn would cause people to leave for urban areas, thereby exacerbating the problems which CALFED intends to address.

2. Priority of water right is critical OUWUA uses approximately 100,000 acre-feet of water per year. That is the entire water right that it has to captured water through the Stony Creek basin. The only other right that OUWUA has is a "natural flow right" to 85,000 acre feet in the Stony Creek watershed itself. In a "critically dry year", the entire 100,000 acre feet of captured water would be consumed, leaving no water available a second "critically dry year". In short, OUWUA would be completely out of water in its second "critically dry year." Since California has regularly had 5-year drought periods,

OUWUA would be without any meaningful supply of water even under the present system by which it holds water rights. Any attempt to re-prioritize or reallocate to the detriment of OUWUA and its members would itself lead to the unmitigable, negative impacts. Priority of OUWUA water rights must be maintained. OUWUA must be "made whole" in this scheme.

GROUND WATER AND CONJUNCTIVE USE ISSUES HAVE NOT BEEN THOROUGHLY AND PROPERLY ADDRESSED

In addition to the negative impact previously addressed whereby a clear right to water is replaced by an enhanced public trust interest in the substituted water resulting from conjunctive use, there are other substantial, negative impacts in this area, which must be addressed.

1. The percolation rate must be identified and quantified so that there is a neutral result in anything less than critically dry years;

2. The source and amount of recharge (as opposed to percolation) must be, identified and quantified so as to achieve the same neutral result;

3. The term "neutral result" means avoidance of overdraft at the end of any year, whatever end date is actually chosen;

4. North State ecosystems cannot be harmed due to lower ground water levels. Specifically, the viability of the Valley Oak trees that rely on high ground water levels cannot be jeopardized by lowered, drafted ground water levels.

5. North State ground water users cannot be strapped with the burden of higher pumping costs due to lowered, drafted ground water levels—a redirected cost.

6. The EIS/EIR contemplates overdraft in critically dry years to be replaced subsequently from *in excess* water years. Standards must be in place to protect the ground water facilities from continuous overdraft beginning in critically dry years. In other words, the volume of percolation and recharge capability must be established and quantified so that the ground water is replaced in a reasonable period of time.

A standard, which would insure the recharge of ground water would be to create an analytical system such as, exists in Orange County where the ground water aquifer must be sufficiently full that salt water cannot impinge on the fresh water source. Certain and constant pressure of fresh water is what keeps the salt water from inundating the fresh water supply. A standard such as this "pressure system" should be suitable and appropriate to preserve and protect the ground water.

7. Issues of Subsidence must be scientifically studied and addressed prior to the establishment of any conjunctive use.

IMPACT OF POPULATION GROWTH IN NORTHERN CALIFORNIA

The state's population has gone from 1.5 million in 1900 to 20 million in 1970 to over 30 million today. Population is expected to increase to 47.5 million people in the

year 2020, with each family needing a quarter acre-foot of water per year for consumption.

That increase in the number of California citizens is likely to spread over more of California than exists at present, simply due to diminishing space near the largest metropolitan areas.

As a consequence, the Program must reserve sufficient supplies of water for increasing populations and changing, more intensive uses in the North State for the foreseeable future, including a "safety net of additional" water for growth and changes beyond projections.

ANALYSIS OF THE FUNDING FOR THE CALFED PROGRAM DEMONSTRATES A LACK OF EVEN-HANDED ANALYSIS

The EIS/EIR is subject to further attack on the grounds that the various alternatives are not being waved with an even hand, as is required by law. The general estimate of current costs for the CALFED, EIS/EIR program is $5,169,000,000. Of that amount the Integrated Storage Investigation Program is expected to cost $370 million, of which $300 million is for south of Delta ground water and north of Delta ground water storage. This leaves only $70 million that is labeled for Integrated Storage Investigations. Furthermore, Integrated Storage Investigations include non-storage components such as Groundwater Conjunctive Use Investigation, Hydro Facilities Reoperation Investigation and Fish Barrier Removal Investigation—all of which do not create new water storage sources. Consequently, less than one percent of the bloated $5 billion plus budget is left for surface water storage study. This is opposed to nearly $1 billion allocated for conveyance. (see Stage 1 Cost Estimates on Page 145 of the "Revised Phase II Report," Draft Programmatic EIS/EIR Technical Appendix, June 1999)

Clearly, pre-established priorities are demonstrated by a simple review of these funding figures. Offstream storage studies are only the tip on a very long tail. And let it be recorded that the EIS/EIS is inadequate in not providing sufficient funding for surface storage opportunities.

CALFED HAS FAILED TO ADEQUATELY ADDRESS SURFACE STORAGE

The EIS/EIR is shortsighted in failing to address additional surface storage to meet the future needs of California's population growth. As pointed out in the preceding section, less than one percent of the estimated $5,169,000,000 cost is dedicated to surface storage alternatives. This lack of funding signifies CALFED's narrow focus and misdirection away from viable solutions. CALFED goes even one step further in discouraging new surface storage as stated:

> *"These assurances include limiting access to CALFED benefits and conditions on new storage facilities."* [Page 2-2, Water Use Efficiency Program Plan]

"Further, inappropriate public investments in new surface or groundwater storage may reduce incentives to invest in water conservation programs and other water management strategies." [Page 86, Revised Phase II Report]

In conclusion, the EIS/EIR is inadequate and not thorough, and therefore renders an incomplete and less-meaningful analysis.

CALFED HAS FAILED TO INCLUDE THOSE MOST IMPACTED BY THE PROCESS

Those giving up rights, having rights reallocated, changing agricultural operations or entire lifestyles, those forced from the land into urban areas have, as a group, been excluded from the CALFED process to this point.

Ordinary citizens, such as those who are members of the OUWUA, are at risk of loss or diminishment of their running water rights, their storage water rights, the manner in which they use their farms and ranches, the financial viability of those farms and ranches, and to the extent less or more expensive water is required to be applied. Yet they have been entirely excluded from the process.

In light of the comprehensive nature of the program, including water shed management concepts, and the indirect beneficial results accruing to local municipalities, it has been unfair and inequitable to leave these people "completely in the dark" with respect to the meetings, studies and decisions which have obviously taken place, and which continue to take place.

CALFED must develop a process by which these ordinary citizens can involve themselves in a timely and meaningful way in the process which leads to the ultimate result. This is particularly true where CALFED is requesting the general public to approve generalized concepts and, sub silencio, approve unstated assumptions, which will carry forward for a period of 20 to 30 years.

Moreover, some of the concepts such as fallowing of ground will lead to severe economic impacts in the entire economic community due to lessened purchasing power. Purchase of agricultural land will result in properties being removed from the tax rolls, thereby causing an additional tax burden to the remaining citizens. This issue has not been addressed in any way and surely constitutes a redirected cost element.

RISKS TO PEOPLE AND DISTRICTS SUCH AS THE OUWUA AND ITS MEMBERS CAN CLEARLY BE DISCERNED FROM THE EIS/EIR ITSELF.

From Draft Programmatic Environmental Impact Statement/Environmental Impact Report

1. At page 1-6 the Ecosystem Quality Element, can easily lead to a taking of water or change of prioritization and the use of water.

2. At page 1-7, the water supply reliability element has a goal to export water supplies to meet beneficial needs including Bay-Delta outflow needs, and improved

predictability of water supplies for beneficial use needs. All of these goals tend to place people, such as ourselves, at risk.

3. Actions related to water conservation are set forth at page 2-11. The agricultural conservation incentive programs contain their own risks, resulting from potential high dollar costs imposed on agricultural users, potential loss of volume of existing water supply through failure to meet program standards with imposed penalties.

4. Under environmental consequences set forth at page 3-3, the results may reduce agricultural income in local areas and may cause localized adverse social impacts.

5. At page 3.4, the theme that "long-term productivity out weights short-term impacts" means changes in land use, changes in application of agricultural resources, and changes in cultural resources [see also pages 3-5, and table 3-7]

6. Page 3-8 references "other programs such as the water use efficiency and water transfer programs", mandating "more efficient allocation of existing supplies." Its statement clearly contemplates redistribution of water resources.

7. At page 3-15 to 3-16, the program contemplates conversion of farmland with adverse economic effects, reduction in water supply, and alteration of land use practices in the upper watershed, resulting in job losses, reduced agricultural production and industry.

8. At page 5.1-25, significant criteria for primary water supply reliability is set, including increased access to economically efficient water supplies during average and drought periods for all beneficial uses (query: what is the price of economically efficient water?), an increase in water system operational flexibility, as well as improvement in water quality.

9. Section 7.2 deals with agricultural economics. "Substantially increased production costs" is identified at page 7.2-15. Purchase of water rights for instream flow would require a change in crop patterns and would affect crop values [page 7.2-16].

10. The primary beneficiaries of storage will be CVP contractors. [Page 7.2-18]

11. Power and energy issues may be re-prioritized through diversion of water presently belonging to OUWUA.

From the Revised Phase II Report

12. At page 65, under the water use efficiency plan, the document states that "it is a opportunity for locals to demonstrate that cost-effective use of water standards are being met [this apparently transfers the burden of proof to OUWUA and similarly situated districts and individuals, requiring those districts and individuals to win by a preponderance of the evidence].

13. Next, new rules, procedures and restrictions would be posed upon present relatively unrestricted water use through metering. Both use and transfer would be controlled thereby.

14. At page 96 the environmental water account is described as "prescriptive". This suggests a taking.

15. CALFED states it will develop a strategic plan for agricultural water efficiency prior to ROD. CALFED states it will rely heavily on local water managers to determine best actions to meet these objectives. However, OUWUA has never been contacted for its input and we are only now nine months short of the ROD date.

16. The Water Use Efficiency Program Plan, on Page P-7, provides that entities such as OUWUA and similarly situated parties would have to sustain the burden of proof to demonstrate efficient water use in order to receive storage permits

17. The certification process for improving water efficiency and best management practices (bmp) would further constrain present rights to use of water.

All these restrictions are measured against a minor increase of water availability with significant irrevocable negative impacts. As appears in numerous places in the documents, the North State is highly efficient in its use of water, already meeting several of the goals of the CALFED program through multiple use and multiple users. Consequently, the proposed burdens to be impose on the North State, and the numerous risks (both direct and regulatory) to there existing water entitlement are misplaced and unnecessary.

CONCLUSION

To pass judicial muster, the EIS/EIR must more coherently identify and address the potential negative impacts of this leviathan-like plan. It must meaningfully and thoroughly address means of avoidance and mitigation.

More particularly, it is critical that the goals of the CALFED Program be prioritized and organized in such a way that there will be no negative impacts in a particular area until the prior, necessary infrastructure has been constructed, because, only in that way, can needless negative impacts be avoided.

There are numerous direct and indirect threats to users of water in northern California. They are regulatory in nature, such as establishment of controls on their use of water with regulatory penalties for failing to comply with new CALFED imposed standards.

Other regulatory threats are based upon a requirement with compliance with new regulatory procedures such as permit systems where none previously existed for adjudicated water.

In addition, there needs to be a balance among the competing interest so that the users in the North State remain whole, so that their interests are not sacrificed for the needs of central and southern California.

A more thorough analysis of the potential, ultimate benefits for enhanced quality and volume of water must be undertaken prior to ROD. This analysis needs to include an enhanced view of surface storage. Anything less renders an inadequate and incomplete EIS/EIR. The effects of multiple use and evapo-transpiration suggests that there is little to be gained in the Program from the North State, yet with profound, irrevocable burdens resulting to those North State interests.

Respectfully submitted,

Steve Butler

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